AUG 6 1986

Y 4.H81/3:P92/4

PRESIDENTIAL NOMINATING PROCESS

COMPLETED
192.

HEARINGS

HELD BEFORE THE

SUBCOMMITTEE ON ELECTIONS

OF THE

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

MARCH 20, MAY 8, 1986, WASHINGTON, DC

ORIGINAL

Printed for the use of the Committee on House Administration

U.S. GOVERNMENT PRINTING OFFICE
61-645 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

CDD

I

BEST COPY AVAILABLE

COMMITTEE ON HOUSE ADMINISTRATION

FRANK ANNUNZIO, Illinois, *Chairman*

JOSEPH M. GAYDOS, Pennsylvania
ED JONES, Tennessee
CHARLES ROSE, North Carolina
LEON E. PANETTA, California
AL SWIFT, Washington
THOMAS S. FOLEY, Washington
MARY ROSE OAKAR, Ohio
TONY COELHO, California
JIM BATES, California
WILLIAM (BILL) CLAY, Missouri
SAM GEJDENSON, Connecticut

BILL FRENZEL, Minnesota
WILLIAM L. DICKINSON, Alabama
ROBERT E. BADHAM, California
NEWT GINGRICH, Georgia
WILLIAM M. THOMAS, California
BARBARA F. VUCANOVICH, Nevada
PAT ROBERTS, Kansas

DAVID C. SHARMAN, *Staff Director*
BOBBY WOOD, *Assistant Staff Director*
CHARLES T. HOWELL, *Chief Counsel*
LINDA G. NAVE, *Minority Staff Director*

SUBCOMMITTEE ON ELECTIONS

AL SWIFT, Washington, *Chairman*

JOSEPH M. GAYDOS, Pennsylvania
CHARLES ROSE, North Carolina
LEON E. PANETTA, California
MARY ROSE OAKAR, Ohio
WILLIAM (BILL) CLAY, Missouri
SAM GEJDENSON, Connecticut

WILLIAM M. THOMAS, California
BARBARA F. VUCANOVICH, Nevada
PAT ROBERTS, Kansas
BILL FRENZEL, Minnesota

KATHRYN ERICKSON JARVIS, *Staff Director*
KARL J. SANDSTROM, *Elections Counsel*
KATHLEEN MCCRIGHT, *Senior Legislative Analyst/Elections*

BEST COPY AVAILABLE

CONTENTS

	Page
Hearings: Presidential Nominating Process	
Thursday, March 20, 1986	1
Thursday, May 8, 1986	71
Bills:	
H.R. 251—To establish a series of six regional Presidential primaries at which the public may express its preference for the nominating of an individual for election to the Office of President of the United States	2
H.R. 1380—To require that Presidential primaries or caucuses be held only during the period beginning on the second Tuesday in March and ending on the second Tuesday in June of the Presidential election	8
H.R. 3542—To provide for regional primary elections and caucuses for selection of delegates to political party Presidential nominating conventions and for Federal funding of Presidential primary elections	10
H.R. 4453—To provide for inter-regional primary elections and caucuses for selection of delegates to political party Presidential nominating conventions	15
Testimony:	
Bennett, Hon. Charles E., a Representative in Congress from the State of Florida	21
Caddell, Patrick, president, Cambridge Survey Research	104
Cleland, Max, Secretary of State, State of Georgia	59
Durbin, Thomas M., election law specialist, American Law Division, Congressional Research Service	160
Gregg, Hon. Judd, a Representative in Congress from the State of New Hampshire	42
Gressman, Eugene, professor of constitutional law, School of Law, University of North Carolina at Chapel Hill	154
Levin, Hon. Sander M., a Representative in Congress from the State of Michigan	33
Manatt, Charles T., former chairman, Democratic National Committee	94
Nelson, Hon. Bill, a Representative in Congress from the State of Florida	28
Prather, Hon. Joseph, president pro tempore, Kentucky State Senate	57
Ranney, Austin, resident scholar, American Enterprise Institute	144
Robinson, Michael J., professor, media analysis project, George Washington University	126
Scammon, Richard, director, Elections Research Center	102
Wayne, Dr. Stephen J., professor, department of political science, George Washington University	51
Winger, Richard, ballot access consultant, Libertarian Party	183
Statements:	
Bennett, Hon. Charles E., a Representative in Congress from the State of Florida	26
Cleland, Max, Secretary of State, State of Georgia	60
Durbin, Thomas M., election law specialist, American Law Division, Congressional Research Service	165
Gregg, Hon. Judd, a Representative in Congress from the State of New Hampshire	45
Gressman, Eugene, professor of constitutional law, School of Law, University of North Carolina at Chapel Hill	156
Levin, Hon. Sander M., a Representative in Congress from the State of Michigan	36
Manatt, Charles T., former chairman, Democratic National Committee	97
Nelson, Hon. Bill, a Representative in Congress from the State of Florida	29
Robinson, Michael J., professor, media analysis project, George Washington University	130

BEST COPY AVAILABLE

Page

Statements—Continued
Swift, Hon. Al, a Representative in Congress from the State of Washington 71
Wayne, Dr. Stephen J., professor, department of political science, George Washington University 54
Winger, Richard, ballot access consultant, Libertarian Party 184
Udall, Hon. Morris K., a Representative in Congress from the State of Arizona 27
Articles:
"Optimal Resource Allocation in Presidential Primaries," New York University, New York, NY 74
"Presidential Preference Primaries in 1988: Projected Scheduling and Recent Developments" 90
Letters of Communication:
Swift Hon. Al, a Representative in Congress from the State of Washington 57
Wayne, Dr. Stephen J., professor, George Washington University 56
Illustration: Regional Presidential Primary and Caucus Act 31

BEST COPY AVAILABLE

PRESIDENTIAL NOMINATING PROCESS

THURSDAY, MARCH 20, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 311, Cannon House Office Building, Hon. Al Swift (chairman of the subcommittee) presiding.

Present: Representatives Swift, Thomas, and Frenzel.

Staff present: Karl J. Sandstrom, elections counsel; Kathryn Erickson Jarvis, staff director; and Kathee McCright, senior legislative analyst/elections (minority).

BEST COPY AVAILABLE

99TH CONGRESS
1ST SESSION

H. R. 251

To establish a series of six regional Presidential primaries at which the public may express its preference for the nomination of an individual for election to the Office of President of the United States.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. BENNETT introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To establish a series of six regional Presidential primaries at which the public may express its preference for the nomination of an individual for election to the Office of President of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Regional Presidential Primaries Act of 1985".

SEC. 2. The Congress finds that—

(1) the numerous elections held by States for the expression of a preference for the nomination of individuals for election to the Office of President of the

BEST COPY AVAILABLE

United States assist democracy but are not conducted with sufficient coordination,

(2) the conventions held by national political parties for the purpose of nominating candidates for election to the Offices of President and Vice President are vital to the process of selecting such candidates for national office, and

(3) in order to preserve an effective and democratic process in Presidential elections and to provide for the public welfare of the Nation, Congress must regulate certain parts of the process for selecting candidates to the Office of President.

SEC. 3. (a) No State shall conduct a Presidential primary except in accordance with the provisions of this Act.

(b) Six regional Presidential primaries shall be held during each Presidential election year. The first regional primary shall be held on the last Tuesday in March, and the remaining five regional primaries shall be held on the second and fourth Tuesdays in April and May, and on the second Tuesday in June, respectively. On the last Tuesday in October in each year immediately preceding a Presidential election year, the Commission shall determine by lot the date on which each regional Presidential primary is to be held. A State may not hold a Presidential primary on a date other

BEST COPY AVAILABLE

than the date assigned by the Commission to the region in which such State is located.

(c) A State which conducts a Presidential primary shall conduct that primary in accordance with laws of the State with the following exceptions:

(1) Each voter shall be eligible to vote only for a candidate for nomination by the party of that voter's registered affiliation, or if a State provides for registration as an independent, a voter registered as an independent may vote only for one candidate for nomination by a party with which such voter is not affiliated. If the law of any State makes no provision for the registration of voters by party affiliation, voters in that State shall register their party affiliation in accordance with procedures prescribed by the Attorney General in consultation with the Federal Elections Commission.

(2) Each ballot in an election for the selection of delegates to a national nominating convention of a national political party shall indicate the candidate of such party, if any, for whom each individual seeking the position of delegate is committed to vote at such convention. If an individual seeking the position of delegate is not committed to vote for any candidate, the ballot shall indicate that such individual is uncommitted.

(d) Whenever the Attorney General has reason to believe that a State is holding a Presidential primary in violation of the provisions of this section, he may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

SEC. 4. In order to be eligible to receive any payments under section 9037 of the Internal Revenue Code of 1954, a candidate of a political party in a Presidential primary shall, in writing—

(1) agree to have his name entered on the ballot of at least one State primary in each of the six regions established by this Act; and

(2) notify the Commission, not later than the last Presidential primary filing date within a particular region, which primary he intends to enter within that region.

SEC. 5. For purposes of this Act, the term—

(1) "candidate" means an individual who seeks nomination for election to be President of the United States;

(2) "Commission" means the Federal Election Commission;

(3) "Presidential primary" means an election for the expression of a preference for the nomination of individuals for election to the Office of President of the

BEST COPY AVAILABLE

United States or for the selection of delegates to a national nominating convention of a political party;

(4) "region" means any of the following six regions:

(A) Region 1 comprises Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

(B) Region 2 comprises Delaware, District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.

(C) Region 3 comprises Alabama, Canal Zone, Florida, Georgia, Kentucky, Puerto Rico, Mississippi, North Carolina, South Carolina, Tennessee, and Virgin Islands.

(D) Region 4 comprises Iowa, Illinois, Indiana. Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

(E) Region 5 comprises Arkansas, Colorado, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, a id Texas.

(F) Region 6 comprises Alaska, Arizona, California, Guam, Hawaii, Idaho, Oregon, Nevada, Utah, Washington, and Wyoming.

(5) "State" means the fifty States of the United States and the District of Columbia, and the territories

BEST COPY AVAILABLE

of the Canal Zone, Guam, Puerto Rico, and the Virgin Islands.

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisons of this Act.

O

BEST COPY AVAILABLE

99TH CONGRESS
1ST SESSION

H. R. 1380

To require that Presidential primaries or caucuses be held only during the period beginning on the second Tuesday in March and ending on the second Tuesday in June of the Presidential election.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1985

Mr. UDALL (for himself, Mr. FRENZEL, Mr. CONTE, and Mr. SWIFT) introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To require that Presidential primaries or caucuses be held only during the period beginning on the second Tuesday in March and ending on the second Tuesday in June of the Presidential election.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Notwithstanding any other provision of law, a Presidential primary with respect to an election of the President of the United States may only be held—

(1) in the year of such election, and

BEST COPY AVAILABLE

(2) during the period beginning on the second Tuesday in March and ending on the second Tuesday in June.

SEC. 2. As used in this Act, the term "Presidential primary" means a primary, caucus, convention, or other means of selecting a candidate for the Office of the President of the United States, except that such term does not mean a national nominating convention of a political party.

SEC. 3. The Attorney General of the United States is authorized and directed to institute any civil action for injunctive relief as may be appropriate to assure compliance with this Act. Such action may be instituted in any district court of the United States for any district where such relief is required to assure compliance with this Act.

SEC. 4. This Act shall apply to Presidential primaries held after December 31, 1984.

O

BEST COPY AVAILABLE

99TH CONGRESS
1ST SESSION

H. R. 3542

To provide for regional primary elections and caucuses for selection of delegates to political party presidential nominating conventions and for Federal funding of presidential primary elections.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 1985

Mr. NELSON of Florida introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To provide for regional primary elections and caucuses for selection of delegates to political party presidential nominating conventions and for Federal funding of presidential primary elections.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regional Presidential Primary and Caucus Act of 1985".

SEC. 2. FINDINGS.

The Congress finds that—

★

BEST COPY AVAILABLE

(1) presidential preference primaries, popular election of delegates, and caucus selection of delegates have become integral parts of the process of electing the chief executive of the land;

(2) orderly regulation of the process is necessary to fulfill the Constitutional requirement for the Congress to determine the time of choosing presidential electors and the manner in which they cast their votes; and

(3) establishment of an orderly system of conducting presidential primaries and caucuses is necessary to promote the general welfare and to insure domestic tranquility.

SEC. 3. REGIONAL PRIMARY ELECTIONS AND CAUCUSES.

(a) SELECTION OF DELEGATES TO CONVENTIONS.—The delegates to each national convention for the nomination of candidates of a political party for the offices of President and Vice President shall be selected by primary election or by caucus, as provided by State law. Such State law shall conform to the requirements of the national political executive committee and the national nominating convention of the political party involved.

(b) TIMING OF PRIMARY ELECTIONS AND CAUCUSES.—The primary elections and caucuses referred to in subsection (a) shall be conducted—

BEST COPY AVAILABLE

(1) in 10 regions (comprised of entire States), with primary elections and caucuses to be conducted in 2 regions (selected by lot by the Federal Election Commission) on each day referred to in paragraph (2); and

(2) in 2 regions on the first Tuesday in February of each presidential election year and in 2 regions at the end of each of the next 4-week intervals.

The Federal Election Commission shall assure, to the greatest extent practicable, that primary elections and caucuses are not conducted in contiguous regions on the same day.

(c) ESTABLISHMENT OF REGIONS.—The regions referred to in subsection (b) are as follows:

Region 1. Alaska, Washington, Oregon, Idaho, and Montana.

Region 2. Hawaii, California, Nevada, Utah, Arizona, and Guam.

Region 3. North Dakota, South Dakota, Wyoming, Nebraska, and Colorado.

Region 4. New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

Region 5. Minnesota, Iowa, Wisconsin, Michigan, and Ohio.

Region 6. Kansas, Missouri, Illinois, Indiana, and Kentucky.

BEST COPY AVAILABLE

Region 7. Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island.

Region 8. New York, Connecticut, Pennsylvania, New Jersey, and Delaware.

Region 9. Maryland, Virginia, West Virginia, North Carolina. South Carolina, and the District of Columbia.

Region 10. Tennessee, Mississippi, Alabama, Georgia, Florida, Puerto Rico, and the Virgin Islands.

SEC. 4. FEDERAL FUNDING OF PRESIDENTIAL PRIMARY ELECTIONS.

The cost of each presidential primary election conducted under this Act shall be paid from the general fund of the Treasury. There are authorized to be appropriated such amounts as may be necessary to carry out the preceding sentence.

SEC. 5. REGULATIONS.

The Federal Election Commission shall prescribe such regulations as may be necessary to carry out this Act.

SEC. 6. DEFINITION.

As used in this Act, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, and the Territory of the Virgin Islands. Any other jurisdiction entitled under the rules of a political party to delegate representation

BEST COPY AVAILABLE

at the national presidential nominating convention of that party may conduct a presidential primary or caucus on any one of the five dates established in Section 3(b)(2).

O

BEST COPY AVAILABLE

99TH CONGRESS
2D SESSION

H. R. 4453

To provide for inter-regional primary elections and caucuses for selection of delegates to political party presidential nominating conventions.

IN THE HOUSE OF REPRESENTATIVES

MARCH 19, 1986

Mr. LEVIN of Michigan introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To provide for inter-regional primary elections and caucuses for selection of delegates to political party presidential nominating conventions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inter-regional Presidential Primary and Caucus Act of 1986".

SEC. 2. INTER-REGIONAL PRIMARY ELECTIONS AND CAUCUSES.

(a) SELECTION OF DELEGATES TO CONVENTIONS.—The delegates to each national convention for the nomination of candidates of a political party for the offices of President

BEST COPY AVAILABLE

and Vice President shall be selected by primary election or by caucus, as provided by State law. Such State law shall conform to the requirements of the national political executive committee and the national nominating convention of the political party involved.

(b) TIMING OF PRIMARY ELECTIONS AND CAUCUSES.—

(1) IN GENERAL.—In each region described in subsection (c), the primary elections and caucuses (as the case may be) in 2 subregions (each comprised of a State or a group of States) shall be conducted on each of the following days of each presidential election year: the second Tuesday in March, the first Tuesday in April, the fourth Tuesday in April, the second Tuesday in May, the fourth Tuesday in May, and the second Tuesday in June.

(2) INITIAL ORDER OF PRIMARIES AND CAUCUSES.—For the first presidential election with respect to which this Act applies, the Federal Election Commission shall determine by lot the order of subregions in each region for conduct of primary elections and caucuses by the States under paragraph (1).

(3) ORDER OF PRIMARIES AND CAUCUSES FOR SUBSEQUENT ELECTIONS.—The subregions determined under paragraph (2) to be first in order for the

BEST COPY AVAILABLE

first presidential election to which this Act applies, shall be last in order with respect to the next such election and the other subregions shall advance in the order accordingly. The order shall change with respect to subsequent elections in a like manner.

(4) SPECIAL RULES.—Any primary election or caucus for the District of Columbia shall be conducted on the same day as a primary election or caucus for the State of Maryland. The Commonwealth of Puerto Rico and any territory, possession, or other entity entitled under the rules of a political party to delegate representation at the national convention of that party may conduct a presidential primary or caucus on any day specified in paragraph (1).

(c) ESTABLISHMENT OF REGIONS.—The regions (designated by number) and the subregions (designated by letter) referred to in subsection (b) are as follows:

Region 1. (A) Maine, New Hampshire, Vermont; (B) Massachusetts; (C) Connecticut, Rhode Island; (D) Delaware, New Jersey; (E) New York; (F) Pennsylvania.

Region 2. (A) Maryland; (B) West Virginia; (C) Missouri; (D) Indiana; (E) Kentucky; (F) Tennessee.

Region 3. (A) Ohio; (B) Illinois; (C) Michigan; (D) Wisconsin; (E) Iowa; (F) Minnesota.

BEST COPY AVAILABLE

Region 4. (A) Texas; (B) Louisiana; (C) Arkansas, Oklahoma; (D) Colorado; (E) Kansas, Nebraska; (F) Arizona, New Mexico.

Region 5. (A) Virginia; (B) North Carolina; (C) South Carolina; (D) Florida; (E) Georgia; (F) Mississippi, Alabama.

Region 6. (A) California; (B) Washington; (C) Oregon; (D) Idaho, Nevada, Utah; (E) Montana, North Dakota, South Dakota, Wyoming; (F) Hawaii, Alaska.

SEC. 3. ENFORCEMENT.

The Attorney General may bring a civil action in any appropriate United States district court for such declaratory or injunctive relief as may be necessary to carry out this Act.

SEC. 4. REGULATIONS.

The Federal Election Commission shall prescribe such regulations as may be necessary to carry out this Act.

SEC. 5. DEFINITION.

As used in this Act, the term "State law" means the law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

SEC. 6. EFFECTIVE DATE.

This Act shall apply with respect to presidential elections taking place more than 2 years after the date of the enactment of this Act.

O

BEST COPY AVAILABLE

Mr. SWIFT. The subcommittee will come to order.

Good morning and welcome to our hearing today on the Presidential nominating process. We are focusing on four bills. First is H.R. 251, a regional primary bill introduced by our good friend and colleague Charlie Bennett. The second is H.R. 1380, introduced by Mo Udall. H.R. 1380 would simply require all primaries and caucuses be scheduled between the second Tuesday in March and the second Tuesday in June.

The third bill before us is H.R. 3542, a different variation of the regional primary idea introduced by Bill Nelson. The fourth is a bill just introduced yesterday, I understand, by Sandy Levin. It is an interregional primary bill.

The Presidential nominating process is an important one. It has long been of interest to some of us on this subcommittee. I have supported regional primary proposals, and in addition Mr. Frenzel and I are both cosponsors of H.R. 1380, which the subcommittee held hearings on last Congress.

I have supported these kinds of reforms because I have been concerned with some aspects of the current nominating process. In particular, with all due respect to the citizens of the great States of Iowa and New Hampshire, I firmly believe that the early contests and the media attention focused on them distort the nominating process. Recent elections have demonstrated that too many candidates are eliminated too early in the process. After a handful of early contests in which a tiny fraction of the electorate has participated, most of the Presidential candidates who spent millions of dollars and months of their time preparing for the race have been eliminated from the field. The vast majority of citizens in this country have little meaningful opportunity to participate in choosing our Presidential nominees.

Party efforts have been made to try to correct this situation. They have failed. Now individual States are seeking to solve the problem by moving their primary dates forward. I am in complete sympathy with their goal, but I am not certain if it is within their power to achieve that goal. Other States cannot move their primaries ahead of or even to the same day as, say, New Hampshire because New Hampshire law requires that their primary be 1 week before the primary of any other State, regardless of when that State might schedule its primary. The best other States can do then is to get close.

And yet, getting close may magnify the outcome of the New Hampshire primary rather than dilute it. As a press story on this issue pointed out just the other day, and I quote:

> Ironically, New Hampshire party leaders and independent observers say that the southern primary could enhance the status of New Hampshire which, one week earlier, will elect 0.1 percent of the Nation's delegates as host of the Nation's premier primary.
>
> Under their scenario the candidates who fare best in the Iowa precinct caucuses and, a week later, in New Hampshire, could ride a timely tidal wave of favorable media exposure and swiftly clinch the nomination.
>
> "It could be all over in barely a month," says George Bruno, New Hampshire's Democratic chairman.

In addition to focusing on the disproportionate influence a few early contests have, these news articles highlight another increas-

BEST COPY AVAILABLE

ingly serious problem, namely the front-loading of the nomination process.

I think it's time we gave careful thought to how we might provide more citizens of all States with the opportunity to participate meaningfully in the Presidential nominating process. I agree with the distinguished former chairman of the Democratic Party, Chuck Manatt, who wrote last year:

> I reject the argument that what we now have is good enough and that it cannot or should not be improved. Revisions in the Presidential nominating process will not cure all that ails the Democratic Party or alter the underlying factors that could undermine the present Republican success. But revisions can make the system more rational, less beholden to separate groups and more reflective of the national will.

A thorough examination of this important issue is the purpose of our being here today. To assist us in that effort, we have with us, along with Charlie Bennett—we may be visited by Mo Udall—we have Bill Nelson and Sandy Levin, and our colleague Judd Gregg.

In addition, we are fortunate to have with us two distinguished individuals who have been influential in the effort to organize the southern primary. They are Senator Joseph Prather, President pro tem of the Kentucky State Senate; and Max Cleland, Secretary of State of Georgia.

Finally, we welcome Dr. Stephen J. Wayne, political science professor from George Washington University, and author of "The Road to the White House: The Politics of Presidential Elections."

Before I close, let me mention that we do anticipate another hearing on this subject, or possibly two, within the next few weeks.

Also, if there is no objection, we will hold the record of this hearing open for 1 month to receive written statements, particularly from members of Congress.

With that, let me defer to the other members of the panel for any statements they might care to make. I recognize the gentleman from California.

Mr. THOMAS. Thank you, Mr. Chairman.

I think as we begin to examine this question of primaries in States, I think we should keep in focus the fact that Presidential candidates are nominated at national party conventions and that the State primary system is a twentieth century phenomenon and really did not begin to spread significantly until after World War II. In fact, the delegates selected by the primaries in particular States may or may not be bound to particular candidates.

As we focus on the primaries and the potential of moving them into bound regions or within time frames, I think we should realize that we are going to focus narrowly on State versus State in terms of perceived advantages, candidate versus candidate in terms of perceived advantage, and that what we ought to keep in mind is the fact that the national party convention was a nineteenth century invention which was an attempt to democratize the selection of the party's nominee away from the old king caucus. And we ought to ask ourselves the question whether or not the national party convention serves a useful purpose. I think to the degree we begin moving toward organized and structured regional primaries, the clear next goal is a national primary. We will have superseded the national convention's reason for existence.

BEST COPY AVAILABLE

My concern is that we continually ask ourselves that fundamental question: Does the national party convention serve a useful purpose, and to what degree will we be undermining that purpose if we don't focus on the larger question and keep in mind the fact that it is the national party convention that nominates the Presidential candidates.

With that, Mr. Chairman, I look forward to a discussion of the very narrow concerns State by State, candidate by candidate, in terms of regional primaries.

Mr. SWIFT. With that, we are ready to begin. It is a great deal of pleasure to welcome both Mr. Thomas and my good friend Charlie Bennett to the committee. I know that you have a committee to chair very shortly, so we will put your prepared text in toto in the record. You may proceed in any way you choose.

TESTIMONY OF THE HONORABLE CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. Thank you very much, Mr. Chairman, for this chance to speak today before the subcommittee on an issue which I have been interested in for some 20 years or longer, regional primaries.

Perusing my files recently, I ran across a newspaper column dealing with the Presidential nominating process. Here is a portion of what it said. This is a quotation from a news article:

> This outlay of money is not the only excess. The expenditures of time and energy are equally disproportionate. Preparations in New Hampshire have been under way since last October, some 9 months before the Republican convention. The candidates are competing there on a hand-to-hand basis, like local office-seekers, and they must meanwhile keep their eyes on the 49 other States.

The above statement could have been made yesterday in the Washington Post, the New York Times, the St. Louis Dispatch or some other newspaper, but it didn't. It appeared in February, not February last but February, 1964, over 20 years ago. And it was in the Washington Star, now defunct.

This dramatizes the point that for years now, people have criticized the nominating process and how it has faulted itself, but there has been no action. They have talked of regional primaries, but it has been talk, pure and simple. It is obvious to almost any observer that the present way we nominate the Presidents is, at best, haphazard. What we need is action to back up our words of criticism.

We won't necessarily solve all the problems for all the years, and the future of the democratic process changes from time to time. It could be what we enact today might be the best we could do for our day. Things may change in the future. So, we are not necessarily putting anything in stone, but we try to make an improvement.

I have introduced what I believe to be very sound legislation. My bill, H.R. 251, would establish a series of six regional Presidential primaries at which the public may express their preference for the nomination of a candidate for election to the presidency. To receive Federal financing under existing law, a candidate would have to run in at least one State primary in each of these regions.

The bill is very straightforward, very simple, very workable. Such a system or regional primaries would reduce the chance of a

BEST COPY AVAILABLE

handful of people choosing a Presidential nominee. With all due respect to the wonderful people of Iowa and New Hampshire, that is what we face today. Individuals running for President now spend an inordinate amount of time and money stumping States that really won't provide that many delegates in the nominating process later on. In so doing, candidates try to catch fire as they roar toward the more populous States. In George Bush's words, they want "the Big Mo in momentum".

To make matters worse, small States such as Iowa and New Hampshire are scheduled mere days before a huge pack of primaries, referred to in 1984 as Super Tuesday primaries. Of course, before 1984 it was assumed that such a front-stacking system would help a wellknown frontrunner such as Walter Mondale. But as we all know, Gary Hart's upset win in New Hampshire propelled him on a flaming trail that nearly garnered him the nomination.

What would H.R. 251 do? It would provide a systematic approach that would help reduce the extremely high campaign expenditures as well as the great amount of time that is now spent on a Presidential primary in a particular State. Additionally, it would help eliminate the costly jockeying that occurs between different States in their efforts to be the most influential primary election.

I believe that regional primaries as outlined in my bill would provide a solution to all of these problems and would allow candidates of all persuasions to actively participate in the primary process without requiring them to concentrate on particular States due to financial restraints.

We ought to move to deal sensibly with the inherent problems which our present ad hoc system of primaries doesn't provide. Certainly we need to strike a balance between well-known candidates and underdogs. It has been said that a Presidential primary would virtually eliminate the chance of an underdog to gain momentum needed to get nominated. This obviously shouldn't happen, but neither should we tip the scales toward unknowns, thus ensuring that already prominent candidates have little chance to get nominated. This bill is a good compromise between the present system and a national primary on a nationwide basis.

Surely there's a way to ensure that all have a fair chance: the Gary Harts, the Pierre du Ponts, the Richard Gepharts, Pat Robertsons, George Bushes and Mario Cuomos. The have-nots—low name recognition, low funded program—should have a reasonable shot against the haves—the high name recognition, high funded candidates. We can do that and will if we enact legislation that provides an adequate number of regional primaries. I believe my bill does that in a very simple fashion.

There is a broad purpose here, more effective democracy. My chief interest in primary elections is to increase the grass roots or democratic base of our country. Admittedly, there are other possible advantages such as elections cost containment. Regional primaries would put sense into the Presidential nominating process. The process we now have is so disjointed as to promote political psychosis on behalf of candidates, not to mention campaign coordinators. We now have a hodgepodge of decisions being made in caucuses, primaries and smoke-filled rooms, with no rhyme or reason to it.

BEST COPY AVAILABLE

Some Southern State legislatures have moved toward a Southern regional primary. This is another case of the people and the States being ahead of us up here in Congress. While we should applaud these States for their taking the initiative, we in Congress should take this up and move to a comprehensive, fair, consistent regional primary system. Only by an act of Congress can we insure a uniform system of regional primaries. My regional primary bill would force candidates to focus their attention on one region of the country at a time, thus allowing them to develop ideas and suggestions and to develop a real coordinated program that would have a focus for the voters and get a grasp of who stands for what among the population. We in Congress must get in tune with the States and the people. Regional primaries is an idea whose time has come.

Thank you, Mr. Chairman, for letting me speak today. Let's move to ensure that future Congressmen aren't still debating this in the year 2004 and beyond. Thank you very much for your kindness in allowing me to appear.

Mr. SWIFT. Congressman Bennett, thank you very much for your statement. I note that you suggested 22 years ago they were campaigning in New Hampshire 9 months before the convention. They are doing that now 2½ years before. And they have already started the delegate selection process in Michigan, which is 2 full years before the convention. One wonders what happens when we start working on the next one before we have elected a President, and we're moving in that direction.

One question is all I have. It gets to the question of enforcement. If a State should simply decide that it was going to ignore or defy Federal law, do you have any suggestions as to what would be an appropriate enforcement mechanism?

Mr. BENNETT. Well, in this law it says that it won't be allowed to hold primaries and the Federal Government can preempt this field of law. That has been constitutionally held. So, they could not hold an official primary for a State after the passage of this particular bill.

Mr. SWIFT. I would presume that what you are saying is that any delegates that would be selected in what would be, quote, "an illegal primary" would be subject to challenge in their own——

Mr. BENNETT. That's correct.

Mr. SWIFT. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

That may be debated by others as we come along in terms of whether or not the parties have the right to control.

Mr. Bennett, in terms of setting up six regions for primaries—and I look at the geographic regions; my colleague, Bill Nelson, does the same—some folks view the United States from the West looking East, and some view it from the East looking west in terms of how you group States together. Some of these groupings make more sense to me than other groupings. It's always difficult, for example, in the West when you have a State like California with the number of delegates at stake in both the Democrat and Republican convention, to assume that folks are really going to spend much time in Nevada or that there is a regional media market that can reach 1,200 miles because it can't. And so some of the arguments that we are making, I think, we have to realize we are using in one

BEST COPY AVAILABLE

part of the country and then applying it across the country when it may or may not fit, because we don't have such things as interstate regional media markets in California spilling over into Nevada or Arizona. And in terms of a convenience in terms of grouping, I guess it's more convenient to say you can travel 1,500 miles within an area for campaigning. But I just noticed that on all the regional ones where we structure it, it's a convenient breakdown. But it probably won't relate to actual candidates' time spent or money spent on media.

But in addition to the regional arrangement that you have broken out, you also require States to do certain things. That is, they allow the States to have the primaries with the exception of.

Is it your intention then that every State that decides to hold a primary is going to have to have a real primary, that is, they can't have beauty contests? Or would they be allowed to have a contest in which it really is meaningless in terms of the selection of delegates, bound or otherwise, to a convention that is more just a popularity vote on a Presidential candidate?

Mr. BENNETT. The bill I have introduced is a very simple bill. It will allow a flexibility of how you approach the binding quality and things of that nature.

As I said earlier on in my off-the-cuff remarks, this isn't something forever. This is something for 1986 and four or five decades later. Things change, and you can't keep them from changing; and it would be unwise for you to attempt to.

The early system of choosing Presidents was a pretty good one for our forefathers when they met in town meetings, and things of that type. Things have become much more complex. The nature of America may be different. You referred to the coverage of TV and how important it is in 1986. It could be slightly different. It could be more important. It could be more coordinated. Things change in the media all the time.

I am not saying this is forever. There may be an improvement on it in the future. But for right now, this is something that can be done. It makes definite improvements over what we have. It doesn't solve all theoretical problems that may occur in the future.

When you refer to the disparity in States, in California consider how different you are in one section of the State and the other. And the same thing is true of Florida. The same thing is true of Tennessee. The same thing is true of many, many States. So, it's just an effort to make sense to divide it up. It's obviously arbitrary. But even within States there are greater differences than there are between States.

So, we are trying to get something that makes sense to concentrate on, in a particular area. We are trying to get rid of the abuses of the present system and get as many good things as we can in the future. But we don't necessarily expect in this bill we are going to solve all the problems of the future.

Mr. THOMAS. You indicate that it is a simple bill. I guess from our perspective in dealing with party registration in States and the relationship between States and requirements in some States in which they don't require you to register on a particular party affiliation, and your bill indicates that you are going to have to set up a register procedure, my concern is that we are dealing with more

BEST COPY AVAILABLE

than one subject matter in your bill. We are setting up a regional primary, but we are requiring from the Federal level procedures that some States now don't practice because they choose not to do it.

My concern is that we are probably going to get in in terms of the mechanics of forcing people into one party or the other, requiring that those folks who are on the ballot be committed or not committed, and that we are placing a degree of uniformity from the Federal level that we perceive is desirable, that the States for some reason or other don't see as desirable. And I think we are going to have to eventually get into those kinds of questions if we want to go beyond simply allowing the regional primary.

We are doing more in this bill than just allowing a regional primary, aren't we?

Mr. BENNETT. Correct.

Mr. THOMAS. We are dictating to the States how they are going to have to relate to the voters in that State as well and how the voters in that State are going to have to relate to the candidates that are selected in the primary. Regardless of what their choices are now on a voluntary basis, they are going to be forced into this uniformity I think that is going to require an additional amount of hearing on this particular bill and all those others that do more than just provide for dates for regional primaries. But I think it's something we have to talk about.

Mr. BENNETT. Well, I am not wedded to any particular language. I just want the Congress to come forth with a bill that solves this problem. It struck me that the bill that I have introduced is pretty simple. When you get married, you make the same sort of decisions that the States and the Federal Government have. In other words, you don't expect to win every battle. You have to make some adjustments to your spouse. That's part of being married. That's part of having a Federal system. Some States will maybe find it very objectionable. When you look at the tremendous revolution that has occurred in the South with regard to its patterns of the past, and it has come out pretty good; so, sometimes we learn by having somebody force things upon us, as painful as it may be at the time. The common good of America is strengthening the process of electing the President and Vice President. These are such important things that maybe these tiny little changes here can be lived with. I don't believe that States are all that wedded to these little tiny points about whether you register in a particular party or not. I have never met a man from any particular State that felt that this was very basic to the success of democracy.

Our present system is a bad system. Just to wait for a perfect system is not doing our service to our country. We should find the best we can for our day and get it enacted and not expect it to be necessarily the thing that is going to be a half century from now or even two decades from now. But right now we ought to make progress.

Mr. THOMAS. I think it is well spoken, and I like your analogy between the Federal system and marriage. The only objection I have to it is that I found out that in the voting procedures in the States you can register decline to state. But that's pretty tough to do in a marriage situation.

BEST COPY AVAILABLE

Mr. BENNETT. Well, I take your advice.
Mr. THOMAS. I yield my time.
Mr. SWIFT. Mr. Bennett, thank you very, very much.
Mr. BENNETT. Thank you.

STATEMENT OF THE HONORABLE CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Thank you, Mr. Chairman, for the chance to speak today before this subcommittee on an issue I've been interested in for some 20 years now—regional primaries.

Perusing my files recently, I ran across a newspaper column dealing with the presidential nominating process. Here's a portion of what it said: "This outlay of money is not the only excess. The expenditures of time and energy are equally disproportionate. Preparations in New Hampshire have been under way since last October, some nine months before the Republican convention. The candidates are competing there on a hand-to-hand basis, like local office-seekers, and they must meanwhile keep their eyes on the 49 other states."

The above statement could have appeared yesterday in the Washington Post, the New York Times, the St. Louis Dispatch or the Florida Times-Union. But it didn't. It appeared in February, but not last February—February of 1964. And it was in the Washington Star!

This dramatizes the point that for years now people have criticized the nominating process and how it is faulted, but there has been no action. They have talked of regional primaries. But it has been talk, pure and simple. It is obvious to almost any observer that the present way we nominate our presidents is, at best, haphazard. What we need is action to back up our words of criticism.

I have introduced what I believe is sound legislation. My bill, H.R. 251, would establish a series of six regional presidential primaries at which the public may express its preference for the nomination of a candidate for election to the presidency. To receive federal financing under existing law, a candidate would have to run in at least one state primary in each region.

The bill is very straightforward and workable. Such a system of regional primaries would reduce the chance of a handful of people choosing a presidential nominee. With all due respect to the wonderful people of Iowa and New Hampshire, that is what we now face. Individuals running for president now spend an inordinate amount of time stumping states that provide only a fraction of the delegates needed to nominate a candidate. In so doing, candidates hope to "catch fire" and roar ahead to more populous states. In George Bush's words, they want the "Big Mo," as in momentum.

To make matters worse, small states such as Iowa and New Hampshire are scheduled mere days before a huge pack of primaries, referred to in 1984 as "Super Tuesday" primaries. Of course, before 1984 it was assumed such a "front-stacking" system would help a well-known frontrunner such as Walter F. Mondale. But, as well all know, Gary Hart's upset win New Hampshire propelled him on a flaming trail that nearly garnered him the nomination.

What would H.R. 251 do? It would provide a systematic approach that would help reduce the extremely high campaign expenditures as well as the great amount of time that is now spent on a Presidential primary. Additionally, it would help eliminate the costly jockeying that occurs between different states in their efforts to get the most "influential" primary election.

I believe that regional primaries, as outlined in my bill, would provide a solution to all of these problems and would allow candidates of all persuasions to actively participate in the primary process without requiring them to concentrate on particular states due to financial restraints.

We ought to move to deal sensibly with the inherent problems with our present ad hoc system of primaries. Certainly we need to strike a balance between well-known candidates and underdogs. It has been said that a national primary would virtually eliminate the chance of an underdog to gain momentum needed to get nominated. This obviously shouldn't happen, but neither should we tip the scales toward "unknowns," thus insuring that already prominent candidates have little chance to get nominated. This bill is a good compromise between our present system and a national primary.

Surely there's a way to insure that all have a fair chance: The Gary Harts, Pierre du Ponts, Richard Gephardts, Pat Robertsons, George Bushes and Mario Cuomos. The have nots (low name recognition, low funding) should have a reasonable shot against the haves (high name recognition, high funding). We can do that and will if

BEST COPY AVAILABLE

we enact legislation that provides an adequate number of regional primaries. I believe my bill does.

There is a broad purpose here—more effective democracy. My chief interest in primary elections is to increase the "grass roots" or democratic base of our country. Admittedly, there are other possible advantages, such as elections cost containment. Regional primaries would put sense into the presidential nominating process. The process we have now is so disjointed as to promote political psychosis on behalf of candidates, not to mention campaign coordinators. We now have a hodgepodge of decisions being made in caucuses, primaries and smokefilled rooms, with no real rhyme or reason involved.

Some Southern state legislatures have moved toward a Southern regional primary. This is another case of the people and the states being ahead of us up here in Congress. While we should applaud these states for their initiative, we in Congress should take this up and move to a comprehensive, fair and consistent regional primary system. Only by an act of Congress can we insure a uniform system of regional primaries. My regional primary bill would force candidates to focus their attention on one region of the country at a time, thus allowing them to outline a coherent set of proposals. This would allow candidates to be more focused and help voters get a grasp of who stands for what. We in Congress must get in tune with the states and the people. Regional primaries is an idea whose time has come.

Thank you again, Mr. Chairman for letting me speak here today. Let's move to insure that future Congressmen aren't still debating this in the year 2004!

Mr. SWIFT. Our next witness is also from the State of Florida, the Honorable Bill Nelson.

I might mention as he is coming to the table that the Honorable Morris Udall has submitted testimony and has informed us that he is not going to be able to be here to testify in person.

STATEMENT OF THE HONORABLE MORRIS K. UDALL, REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, I thank you for the opportunity to testify on behalf of H.R. 1380, bipartisan legislation which would bring badly needed order to the timing of presidential primaries, caucuses and conventions. Along with you, Mr. Chairman, Representatives Frenzel and Conte, this measure has been co-sponsored by twenty-four of my colleagues.

H.R. 1380 would limit the selection of delegates to our national nominating convention to a reasonable period beginning in the second Tuesday of March and ending the second Tuesday in June.

This bill does not call for a drastic overhaul of the presidential primary system. It does not violate the constitutional prerogatives of the states and parties to determine how to select presidential nominees. If enacted it would result in two important changes in the way we choose our presidential nominees. First, the primary season would be limited to a specific period of time, eliminating the disproportionate influence of a few primary states. Second, a shorter primary season would reduce the amount of campaign spending and relieve some of the "boredom factor" experienced by many voters.

Under the present system of primaries and caucuses, too much emphasis is placed on the results in two small states by both the candidates and the media. We have in fact delegated to New Hampshire and Iowa virtually the power to pick our presidential nominees.

The folks in New Hampshire and Iowa are good people, but I don't think they should have the sole responsibility of choosing our presidents. In fact, there are fewer Democrats in the whole state of New Hampshire than there are in my congressional district. Many candidates have been knocked out of the race simply by not having won those states or done as well as the media expected. I think, Mr. Chairman, that we need a more equitable system for picking our presidents.

Mr. Chairman, this legislation does not compel secretaries of state to hold a primary or a caucus on a specified state. Nor does this legislation compel the political parties to hold regional contests on specified dates.

The genius of this bill is its simplicity and its purpose is clear: to make the selection process cleaner and fairer.

Our presidential primary season has become a marathon event, stretching from the cattle shows and straw polls of Wisconsin to the primaries of California and New Jersey. This lengthy process literally wears out the voters, testing their patience and dulling their senses.

BEST COPY AVAILABLE

Prolong presidential campaigns are also extremely expensive. In this past primary cycle, the Democratic candidates spent a whopping 69 million dollars. A shorter primary season would reduce the necessity and opportunities for excessive spending.

We are fortunate to live in a country that is distinctly unique and varied. We are a nation of rich diversity. Our primary/caucus system should be designed to reflect this diversity. It should test a candidate's ability to build coalitions and to represent regional and national interests.

Mr. Chairman, the time for enacting this simple but important legislation is now. We should not lose an opportunity to bring the selection process of our presidential nominees into the mainstream of our national political institution and out of the hands of two states that have made presidential politics a cottage industry.

Mr. SWIFT. Bill, welcome. Your formal statement will be made a part of the record. You may proceed as you choose.

Mr. NELSON. Mr. Chairman, I thank you. I am going to abbreviate this. I need to chair a hearing at 10 o'clock.

TESTIMONY OF THE HONORABLE BILL NELSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. NELSON. Let me just talk from the map that I have passed out. The thrust of this bill, H.R. 3542, is to set up 10 regional primaries. The map suggests ten regions, but by no means is that anything with any terrific finality to it. It's just 10 regions that sort of naturally developed as we were looking at the United States.

The specific lines of what States are in the regions is not what is important; it's the principle that you would set up 10 primaries, 2 to be held each primary day starting in February of the Presidential election year, and each of the remaining 4 primary dates, or a total of 5, would come 4 weeks thereafter. So, candidates would be compressed into basically a 4-month period, 4 weeks apart between the primary or caucus dates. On each of those five dates there would be two regions in the country that would be having a primary or their caucuses, all determined by State law.

The Federal bill that I have filed gets the Federal Government in the act of setting this up and paying for the primary elections. But as far as the rules, the law that would govern the elections, that is all conducted by the States. It's the principle of saying that there has got to be a better way than the chaos of candidates running all over the country, west to east, Mr. Thomas, and east to west, running to this or that State caucus or primary. This tries to bring some rationality into the system.

Now, obviously it would be considered by most States to be desirable to be first. So, how do you handle that? You do it by lot.

My suggestion is that all ten groupings of whatever you decide are the groupings of the States within a region would draw by lot, and they would fall on one of those five election dates, with the only proviso that you would not have two regions contiguous on the same election date. That is simply so that you wouldn't stack the geographical preference. In other words, you wouldn't have regions one and two being contiguous on the first primary date. It would have to be region—if the lot had region one showing that it was going on the primary date, there would have to be the other region going on that first primary date would have to be a noncontiguous region to region one.

BEST COPY AVAILABLE

Mr. Chairman, that pretty much summarizes the philosophy of this legislation.

STATEMENT OF THE HONORABLE BILL NELSON A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I am pleased to have an opportunity to appear before your Subcommittee on Elections on behalf of my bill, H.R. 3542, the Regional Presidential Primaries Act.

This legislation is aimed at bringing a measure of order to the present chaotic process whereby we nominate condidates for President of the United States.

The way we have elected the President of the United States has evolved over two centuries. Originally, the President was chosen in the Electoral College by electors picked by the various State Legislatures. That system went out well before the Civil War. It was followed by the popular election of the electors who cast their votes for the presidential and vice presidential nominees of their respective political parties.

The nominating of presidential candidates has also undergone profound evolution. After the obvious choices among the Founding Fathers, such as Washington, Adams and Jefferson, the emerging parties began to choose their presidential and vice presidential nominees in cacuses of their members in the Congress. This was followed by the national party convention system which was inaugurated by the supporters of Andrew Jackson.

In our own time, presidential preference primaries and grass-roots caucuses have come to play a major role in choosing the presidential nominees. This has contributed to the popular nomination of our presidential candidates, corresponding with the popular election of the members of the Electoral College, who now essentially rubber stamp the results of the popular vote in the Presidential election.

The chaotic element comes from the competition of the various states for the honor and the business benefits of having early primaries, which extend the primary period and exhaust the candidates, and from the local caucus system which puts a premium on special interest activists who turn out for the caucuses and lay claim to bits of the candidate's political soul. The result can be the nomination of an exhausted candidate, who has been running all over the country to campaign in widely scattered primary and caucus states, and a candidate who has been forced to take positions that prevent him from offering mainstream leadership to the American people.

I think we need another major change in the way we choose our chief executive—to move from the chaotic presidential primary and caucus system of recent years to an orderly system of regional presidential primaries.

As you know, many of the Southern states are moving their primary dates to March 8, 1988, which will produce a "Super Tuesday" presidential primary in the South. I believe this effort is constructive and I support it.

However, I have to recognize the concern of many that this will lead to a national primary, which would overtax the capacities of all but the strongest and best financed candidates.

I believe it would be better to have an established system of regional primaries that would end the competition among states and regions and, at the same time, provide a known pattern of primaries over a period from February to June, which would allow the American people a chance to get to know the candidates and make their judgment upon them.

My legislation would reform the nominating process by dividing the country into 10 regions and provide for primaries or caucuses in the states of two of the regions at a time—on one of five dates over a four-month period.

The states could decide, with the respective national and state party committees, on whether to have a primary or a caucus or to choose their national convention delegates in some other way. But the dates of primaries and caucuses would be specified according to lot and would be limited to the five dates separated by four week periods. Candidates would be able to concentrate on the states in two areas, instead of running all over the country in a frantic effort to meet primary and caucus schedules set by competing state legislatures.

I think it is important that the Federal Government, at this stage, not preempt the power of the states and the national parties to make their own rules for primaries and caucuses—except in this crucial area of the timing of the primaries and caucuses, which has become so central to the nominating process.

I personally favor, for example, rules which would allow independents to vote in party primaries, if they choose. I think this would encourage each party to seek to broaden its appeal to a majority of the voters. I think this would be healthy, would

61-645 O - 86 - 2

BEST COPY AVAILABLE

bring more people into the mainstream of presidential politics, and would enhance the chances that the candidates nominated would be more representative of the mainstream of America.

Nevertheless, I do not think we should legislate such a rule. I believe the parties and the states, which have differing political traditions, should decide this kind of question for themselves.

My view is that the timing of primaries and caucuses is so important that we should address this question through national legislation and leave the other questions to the states and the political parties.

My legislation would encourage states to conduct presidential primaries, by providing funding for primaries mandated by the national government. But it would not require them to adopt the primary system.

I think a regional primary system would serve the country better than a combination of primaries and caucuses. But the essential reform, I believe, is to establish an orderly system of dates for primaries on a regional basis.

I think the result would be a more orderly and rational system of selecting the Chief Executive of the greatest country on earth. It would make the presidential selection process less of a mad scramble and would strengthen our basic democratic institutions.

I have suggested in my legislation that the country be divided into 10 regions (including states and territories choosing convention delegates) for purposes of conducting presidential primaries and caucuses. A suggested division of the country for that purpose is attached. I have made this suggestion simply in order to show that a reasonable division of the country into 10 regions is possible, not to imply that this is the only manner in which such a division could be accomplished. I would welcome any suggestions for modification of the boundaries of these districts.

The important point, I think, is that 10 primaries—conducted in separate parts of the country—would answer the concern that one region or another would have an unfair advantage over other regions. The proposal I have made would allow voters in two non-contiguous regions to have their say on presidential candidates on successive primary dates. I think this would keep the presidential nominating process open, while providing some order and rationality to the process.

I hope this committee will look favorably on a system of regional primaries and I urge you to report legislation to the House which will begin to bring some sanity and order to the way we nominate our Presidents.

I want to note in closing that it has been brought to my attention that several states require that major parties nominate their presidential candidates before they conduct petition campaigns to get on the presidential election ballot. I believe that language which would recognize this requirement should be included in a committee markup. It is not my intention to exclude minor parties from the presidential election process.

I do recognize, however, that our two-party system has a long tradition and that it has served our country well. The basic legislation I am proposing would strengthen that tradition and enhance the vitality of our traditional political system.

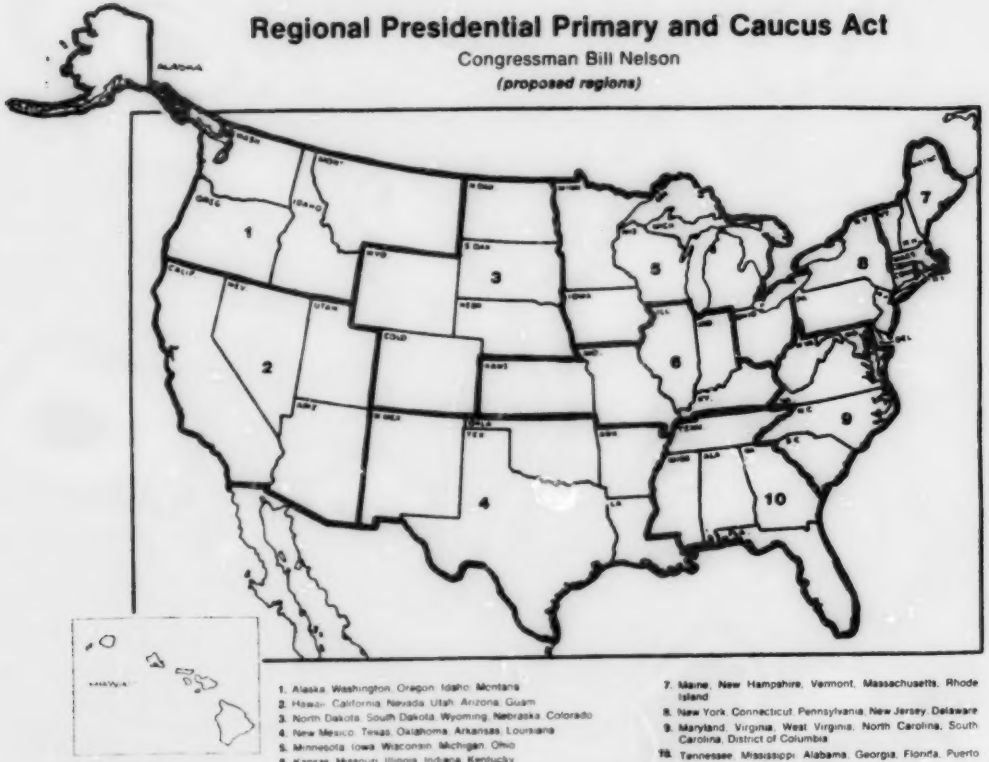
I thank you for the opportunity to appear before you today.

BEST COPY AVAILABLE

Regional Presidential Primary and Caucus Act

Congressman Bill Nelson

(proposed regions)



1. Alaska, Washington, Oregon, Idaho, Montana
2. Hawaii, California, Nevada, Utah, Arizona, Guam
3. North Dakota, South Dakota, Wyoming, Nebraska, Colorado
4. New Mexico, Texas, Oklahoma, Arkansas, Louisiana
5. Minnesota, Iowa, Wisconsin, Michigan, Ohio
6. Kansas, Missouri, Illinois, Indiana, Kentucky
7. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island
8. New York, Connecticut, Pennsylvania, New Jersey, Delaware
9. Maryland, Virginia, West Virginia, North Carolina, South Carolina, District of Columbia
10. Tennessee, Mississippi, Alabama, Georgia, Florida, Puerto Rico, Virgin Islands

BEST COPY AVAILABLE

Mr. SWIFT. Thank you very much.

How important do you feel it would be to retain the noncontiguous part? I just note, for example, that region 6 is contiguous to region 3, 4, 5, 8, 9, and 10, which would make it extremely difficult, I would think.

Mr. NELSON. I am not hung up on that, Mr. Chairman. It's the principle. Whether or not region 6 were to be exactly the way that we have designed it here is for your wisdom and your committee.

Mr. SWIFT. Very good.

Mr. Thomas.

Mr. THOMAS. Thank you.

I understand your time constraints, but the question I have again is the added feature to the regional primaries. That is that the Federal Government would pay for the Presidential primary. In some States now the Presidential primary every 4 years is tied in to the ordinary normal primary, for example, in California the first Tuesday in June. We mail the packets all together with the local candidates and the congressional. If the Presidential primary is by lot, it may occur that at certain times in the Presidential cycles California would wind up holding its Presidential preferential primary on the first Tuesday in February. Then the regular primary wouldn't occur until the first Tuesday in June. I am sure other States would wind up in the same predicament as to shifting dates.

Again, you believe that the value of your structure supersedes any State's desire to combine and have only one election rather than, for example, like the State of California. If it were to hold a separate second election with all of the precincts open and all of the election workers out, the price is horrendous. But if it were combined with the regular primary, the additional cost of paying for the Presidential primary would be minimal.

Do we have any cost estimate if we broke away all of the States that have their Presidential primary tied now to their regular primary if they were at a different time?

Mr. NELSON. Well, that's exactly the reason that I suggested in this legislation that you would have to come forth with the carrot approach and offer to pay for the Presidential primary, since it would be mandated to be on another date. However, in the practical matter of the example that you suggest, it may well be if California drew by lot that its region, region 2, would be the February election date, it might be to the California State Legislature's desires that they might want to move their primary to that date. But in the case that they didn't——

Mr. THOMAS. Do you want the answer now or later?

Mr. NELSON. It makes no difference to me what the answer is. The principle is that, if you are going to impose a system that will bring rationality to the Presidential nominating process, you are going to have those kinds of quirks that are going to develop among States. Therefore, what's the best way to try to accommodate the States under those circumstances?

I am suggesting that a payment from the National Government would be an incentive for them.

Mr. THOMAS. I understand that, but the quirk is a random selection which will change from Presidential election to Presidential

BEST COPY AVAILABLE

election, which wreaks havoc with the clerks. How wedded are you to the concept of selection by lot in terms of when the regions hold their election? If there was some certainty and California knew it was in a particular time block, then the legislature could make the decision that they would tie the local primaries to it. But if it's going to change every 4 years, there's no way they're going to——

Mr. NELSON. Sure.

Mr. THOMAS [continuing]. Chase the calendar in terms of when you have the nominating process and the paper process. It would be a different date each time. So, the contiguousness was not critical, I guess, to the concept. How about the selection by lot?

Mr. NELSON. Select it by lot the first time and keep it that way thereafter. I mean, there are an infinite number of varieties. Select it by friendly persuasion and those with whom you cannot accommodate into a particular election date by friendly persuasion, then do it by lot.

Mr. THOMAS. But take your bill and kind of squint at the particulars but look at the overall structure and figure out where we can go.

Mr. NELSON. That's right.

Mr. THOMAS. OK.

Mr. NELSON. I mean, this—you know, when I filed this last year, I mean, this is a radical proposal. I had been talking within the Democratic Party. You know, people sort of look. You talked about squint. They would sort of squint their eyes and look at me. This is radical politics here. But it's time for radical politics to—in your words and the chairman's words, get some rationality and bring, out of chaos, some kind of ordered structure to this process of nominating a Presidential nominee.

I thank you. I am going to run to that hearing. You are mighty kind, Mr. Chairman, to accommodate me here. I appreciate it.

Mr. SWIFT. Congressman Nelson, thank you very much, for your contribution.

The next witness is the Honorable Sander Levin of Michigan, who I believe just yesterday introduced a piece of legislation. Is that correct?

Mr. LEVIN. It is. The magic number is 4453, talking about lottery.

Mr. SWIFT. You may proceed as you choose.

TESTIMONY OF THE HONORABLE SANDER M. LEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. LEVIN. Thank you.

I know my full statement is in the record, so let me, if I might, summarize. I would like especially to try to address myself to some of the points that the two of you have so cogently raised.

I believe there are at least three militating principles or points as we look at this issue. First of all is the power of the Presidency. I became involved in the issue of primaries first when I was a party chairman, State chair in the late 1960's in Michigan. We set up a commission to look at this issue. Then I became further involved after I lost a gubernatorial race and went to the Kennedy School and spent a semester teaching, so to speak, a course on the Presidential nomination system. What motivates me much more

BEST COPY AVAILABLE

than ever is a few years here. The importance and power of the Presidency, it seems to me, is self-palpable. When we talk about the nomination of the two candidates for President, we are talking about a vital, vital issue.

The second point relates to what Mr. Thomas raised. I think primaries and broad-based caucuses are here to stay. There is no turning back. Public participation on a broad basis has become knitted into the American fabric. We can talk about why there is no turning back the clock. The issue really is how we fit those into party convention processes.

There still will be a need for a national party convention for platform. But also I think we should remember that sometimes primaries will not produce a clear winner. I am convinced, for example, in 1968, if Robert Kennedy had lived, there would have been a very contested national convention on the Democratic side. The Republicans have had contested national conventions with a primary system.

The third point, and I feel this deeply, no place is representative. I have heard Representatives from Iowa and New Hampshire testify at the Democratic national meetings. I have read the articles in Michigan now. The process is beginning right now, at least in one party, in the State of Michigan. As I said in my testimony, maybe gas stations and food outlets and motels look the same from State to State. But States are different. I am not going to sit here and say that Michigan can represent Mississippi.

What is happening is this. The South is rearing up, and I think that's good. They don't want to be spoken for by the people of New Hampshire or Iowa or Michigan, and they should not be. We are not electing a local drain commissioner, as important as that might be. We are nominating Presidential candidates.

Now, the problem with a national primary, it seems to me, is clear. It's all at once. There's no time for issues and debate on issues to evolve, and probably too much premium on money.

The trouble with regional primaries—and there are some interesting and, I think, well thought through proposals; but I find it hard to imagine a regional system that assures representativeness. Even if you take two together, I think it's easy to imagine combinations where you would not have a representative set of primaries. I believe the legislation bakes this in the system for a number of years, the groupings for a number of years. I don't think we want to go through a lottery every 4 years.

So, after a lot of work, we have devised a proposal, an interregional Presidential primary and caucus act. The States are grouped into six regions. States are to be selected from within each region for a series of primaries or caucuses. So, you have representativeness.

Let me quickly, if I might, address some of the questions that have been raised, and they are salient ones.

How much of a Federal mandate is there? Well, in this proposal the mandate is that a primary or caucus be used that shall determine the delegates to the national convention. That does not mean, in my judgment, that the Federal legislation determines whether the delegates are committed or noncommitted or whether there has to be, for example, party registration. There can be considerable

BEST COPY AVAILABLE

leeway left to the States, but there should be a standard of representativeness. So, beauty contests, I think, if the Federal Election Commission were the one to implement it, would be prohibited.

As long, though, as the system guaranteed representativeness, you could use congressional districts, State legislative districts. In a word, a lot of discretion would be left to the States, except there would be a few basic standards.

The question has been raised about havoc and changing the dates all the time, and that is a consideration. But under this proposal you would essentially set the pattern for 20 years. The States would know when the dates of their primaries or caucuses would be held.

As to cost, the bill doesn't directly address it. I can see good arguments for Federal financial underpinning of the costs of these primaries or caucuses. In most cases, they would not be combined; but the dates would be clear. Where States wanted to combine other races with the Presidential nomination contest, they could do so. It would mean that there would perhaps be some movement from Presidential year to Presidential year. But I don't consider that to be a major impediment.

The groupings, we tried to make sense of them. I urge—you will give it anyway—your full scrutiny. I believe they make sense. Obviously, there are arguments for other groupings. But I believe that these regions show one thing. That is it's possible to group as an intelligent reasonable basis from which to make selections for this kind of structure, this interregional Presidential primary and caucus act.

There is one last point about the legality of this. Some have urged that the law is murky, that the Federal Government cannot intervene in this area. I have tried to look at the various documents. In my judgment, this kind of proposal and the others for a nationally mandated system, these proposals are constitutional.

The world has very much changed in the last 20 or 30 years. The world of government and politics in America have changed. It is clear to me, as I said at the beginning, that the primary caucus system is here to stay. What is happening today is that the deck of cards, the house of cards is falling. Everybody now wants to get into the act. There is more electricity than our outmoded circuits can bear. We simply have to change the pattern and make sense of it.

I deeply appreciate your efforts.

I just, if I might, want to add, Mr. Chairman and Mr. Thomas, one last point.

I sense almost a sense of kind of helplessness about this issue. I sense some people think that you may be spinning your wheels. They laud you for it. But they say, look, we've had disarray for these many years. And one way or another, disarray will continue.

I suggest the opposite. Disarray can become so complete that it forces a change in the system. I think we are no more than one Presidential election away from the chaos of forcing action. It is my hope that we are no election away from acting.

BEST COPY AVAILABLE

STATEMENT OF THE HONORABLE SANDER M. LEVIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

The jockeying by southern states for an early regional primary should not surprise anyone. Indeed, it's only surprising that it did not occur earlier. Why should states in the South continue to see early events shape the Presidential nomination battle as they sit on the sidelines?

They've heard all the arguments in favor of the status quo. They heard that New Hampshire and Iowa are "typical." They don't believe it because it isn't true. South Carolina may be quite like North Carolina but not much like New Hammpshire; fast food outlets, gas stations and motels in Georgia look mighty like those in Iowa but once you get beyond the neon signs into the towns and onto the farms, you see that they make different goods and grow different crops and often as not, see the world from a different angle.

Now Michigan is trying to get ahead of Iowa, New Hampshire and the Southern States, at least for the GOP nomination, by starting their process in 1986. A lot of people who live in Michigan were born in Mississippi and we're all part of one nation, but anyone who believes that either state can speak for the other knows neither.

The present primary scramble is a healthy sign; anti-bodies are fighting harder now against an ailment in the body politic. That ailment is a helter-skelter process for nominating Presidential candidates.

When the process did not acually involve the public, it made sense to leave every state and their political parties to do it their own way, at their own times. But we have passed the point of no return.

As a former State Party chairman, I want to help strengthen, not weaken political parties. But the public is into the presidential nomination to stay. Let's accept the fact and create a system that takes into account broad public participation and an effective role for political parties.

What should be the objectives of a Presidential nomination system in the context of American democracy?

It should offer a fair reflection of all parts of the nation, with no one state or even region of the country having an unfair, disproportionate advantage in determining the outcome.

It should offer the electorate time enough to watch a candidates' ideas develop in the crucible of daily campaigning and, at the same time, it should offer candidates time enough to develop their political message in a give and take with the electorate.

It should offer all candidates the possibilities of making their names and positions known before the outcome has already been determined.

The Inter-Regional Primaries plan would insure that all states and regions would be farily represented in the Presidential nominating process, that the electorate would have the time to watch a candidate move through the ups and downs of a dramatic process, and that all candidates, well known and less known, would have a chance to make their positions clear before the nomination is sewed up.

The Inter-Regional Primaries plan would create, for the purpose of the presidential nominating process, not regional primaries and caucuses but a scheduled series of six inter-regional primaries and caucuses. The bill would provide for six set dates, between the second Tuesday in March and the second Tuesday in June, during which all state primaries and caucuses would be held.

One state—or in the case of states with smaller populations, paired states—from each of six divisions of contiguous states would be selected by lot to hold their presidential nominating contests on one of the six specified dates. The states selected to be first in order for the first presidential election to which the act would apply would be last in the next election and the other states would advance forward.

Over a twenty-four year period, all states would be guaranteed of leading off the presidential nominating process once and only once.

This is, in its general form, not a new idea and it's not a partisan idea. In 1972, Robert Finch, counselor to President Nixon, sketched out a similar plan.

I think it's a good plan because scheduled inter-regional primaries go to the heart of the main problems we are all wrestling with here today. With inter-regional primaries, no one state or even region of the country would have an unfair, disproportionate advantage in determining the outcome of the presidential primary process. Candidates would not be unfairly eliminated because they didn't appeal to one particular constituency, nor would any particular candidate be selected because he or she was able to take early advantage of a primary schedule skewed to the advantage of one particular outlook. Instead, all candidates from the very beginning

BEST COPY AVAILABLE

would have to prove their mettle and wide appeal to states from around the country.

At the same time, the inter-regional primaries would not create the same difficulties for candidates as a national primary would. First, costs would be far more contained. Early candidates would, at the most, only have to campaign in approximately one sixth of the states and could, if they so decided, participate in only a selected number of contests on any given primary and caucus date. Unlike a national primary, there would be time for the candidates; views to be fully developed and examined. And the electorate would have the time to fully observe the candidates develop their political agendas under the pressure of constant attention and questioning.

Equally important, the candidates would have the time to learn, through trial and error, about the best ways of communicating their messages to a national constituency.

This bill would also stop the problem of "front loading" in its tracks. Inside and outside experts alike have been warning us of the dangers we face if we allow the primary process to simply meander along as it has been. Tom Donilon, chairman of the Democratic Fairness Commission's technical advisory committee warns that "the Party is kind of sleepwalking into a national primary."

Michigan Democratic Party chairman Richard Winger observes, "If the South is successful," in creating an early regional primary, "it will compel virtually every state that wants to have influence on the process to move forward and that will be very unhealthy." Such front loading, political consultant David Doak states, "will favor candidates with a huge amount of money and lots of name identification.

Under the current system, those Southern states working to create their own Super Tuesday and all other states aiming to push their primary and caucus dates forward are, as I've already suggested, simply doing what very much is in their own self-interest. When there are no rules to guarantee fairness it is every state for itself, and, under its state law that mandates that it shall always hold its presidential primary before all other primary states, New Hampshire against all.

While the contest to "go first" or to create a regional super primary is undoubtedly in the best interest of individual states, all of whom are simply seeking to maximize their influence on the process, it is not in the best interest of the nation as a whole.

We all want a fair and equal share in the selection of our candidates for our nation's highest office. Under a scheduled inter-regional primary and caucus system, every state and every voter would share equally in the excitement and responsibility that comes with having a full and critical part to play in a vital part of our democratic process.

Thank you for this opportunity to testify.

Mr. SWIFT. Sandy, thank you very much.

We have not had a chance to examine in detail your bill because it was just introduced yesterday. But it adds a very interesting dimension to how you slice this up and get some balance geographically across the country.

I have two questions. One, you come from a State that I had already mentioned is already churning around into the delegate selection process for the Presidential campaign of 1988. I gather from your remarks you are not terribly impressed with starting things that early. Or do I misread you?

Mr. LEVIN. No, no. You read me completely. It's not only that I am not impressed. I am very much opposed to this mad scramble as to who comes first.

Let me add, it is distorting the processes. It is distorting the processes. It is in the other party at this moment, but, you know, what affects one party eventually affects the other. We have a gubernatorial race to run in 1986. The public deserves focus on that. Because Michigan wants to be first, because New Hampshire has this law, Iowa has this law, because now southern States, I think appropriately, are pitching in and standing up for their interests, it has been decided: We'll go first and we'll set up this labyrinthine process, where people are going to vote for precinct delegates. And as a

BEST COPY AVAILABLE

former city chair, I know how important that can be if you make it important. But to put weight on that system in 1986 and expect it to be fairly reflected in results in 1987 and 1988 for the presidency of the United States, in my judgment, is a gross distortion of democratic process, with a small D.

Mr. SWIFT. Are you suggesting that the particular system that you have apparently operating in Michigan is going to have voters, particularly people within the party, having to look at two elections at the same time? They are going to be trying to select State legislators and members of the house and occasionally senators and Governors in 1986 at the same time they are worried about delegate selection for 1988?

Mr. LEVIN. Absolutely.

Mr. SWIFT. You really have two elections mixed in a given time.

Mr. LEVIN. Yes, and the people aren't going to readily see what they are voting for in this first step of the Presidential nomination process in Michigan. We have been through this in the State. There is no way for voters—we can't expect voters to respond intelligently to a decision if the decision isn't posed, the question isn't posed intelligently and clearly. And that isn't the way it's happening in Michigan. I would say the same if we were doing that in the Democratic Party. It's a distortion of, I think, a clear, open system in a timely fashion to select delegates to a national convention.

Mr. SWIFT. I have one last question. Before us are bills that go—such as yours and the two gentlemen from Florida, each with slightly different approaches—with fairly detailed structuring of the primaries. The other bill, the fourth bill that is before us, only deals with setting the time period, the window during which you can have these. It says you can't start before such and such a time to have these, and you have got to have them all done by such and such a time. It sets that window.

How much of the problem do you think could be solved by that latter more limited approach? Therefore, I guess my question is, do you really need to go into as much detail as you and the Florida proposals would? And how much more of the problem do you solve by doing that than you achieve when you just cluster them in a little tighter window?

Mr. LEVIN. I believe you have to go beyond a window. Since that proposal was originally presented and, as I understand it, presented by the person who has cared more about democratic process in America than maybe anybody else, but a lot has changed just in the last year. If you have a window and you just say conduct yourself at any point, you are going to stimulate front-loading. Everybody is going to want to be at the front of the window. So, you will end up with kind of an opaque window.

Who's going to want to go last? Are they going to jockey it every 4 years depending on where they think their advantage may be?

I think we have to face up to the basic fact that the public is into the Presidential nomination system. When the public is into the process, we want to have a system that does not undermine or undermines as little as possible and, if possible, even strengthens the party processes. But any system that relies on public participation in a democracy needs to take reasonable steps to assure representa-

BEST COPY AVAILABLE

tiveness. It's just that simple in a democracy. It is not simple to implement it. A window isn't enough.

I don't see that this interregional primary system is so duly complicated. It's not simple, but it's workable.

Mr. SWIFT. Thank you.

Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Thank you, Sandy, in terms of your thought put into an examination of the process and a possible solution.

In reading the section selection of delegates to conventions in your bill, it says the delegates to each national convention shall be selected by primary election or by caucus, as provided by State law. Is that inclusive of all of the delegates? Now State law in some States allow delegates to be selected by State convention. Is that contained in the concept of caucus that you have there? A formal State convention is different than either of those. And does that mean then that State conventions would be outside your legislation?

Mr. LEVIN. That's a cogent question. The answer is, it's one question that I think needs to be worked out. Where the system of State convention selection can be based on clear enough processes to be representative, then I would very much agree that selecting delegates for a State convention would be an adequate process.

Mr. THOMAS. I believe Wisconsin has already survived a court test in terms of whether or not the convention process would be determinative of the selection of delegates. This is in reference to your second of your three basic points about not turning back the clock. I would suggest to you that in any of the proposals which have a degree of randomness or a degree of certain change, as yours does, as opposed to randomness, that there would be a number of States that would consider moving toward a very representative State convention procedure which could be structured in a way to circumvent or at least remain outside of any Federal law imposing these kinds of procedures on a primary system.

I understand where you are trying to get to, and I don't necessarily disagree with you. I just know that on a daily basis of dealing with Secretaries of State and county clerks when we deal with the election procedures that this kind of a—even if you know for certain 20 years ahead of time how many times you are going to be out of sync, that is not sufficient for them, from a pure dollars and cents point of view. What we need to do is talk about what it is that we want to accomplish. I think if we find that something like a State convention for the selection of delegates to a national party convention is outside of the structure that we have established, you may see more than one State adopt a convention system so that they would be outside the requirements. Then you have an early State convention for the selection of bound delegates to the national party convention. And I can assure you the gentleman seated directly behind you would implore his State to put into effect a State convention so New Hampshire could be the first State to have bound delegates to a convention in terms of directions.

It's just that, when you try to put the genie in the bottle, we've got to make sure that we understand the universe that we're dealing with.

BEST COPY AVAILABLE

Mr. LEVIN. No, no, but maybe my answer then wasn't clear enough. I think we should consider a process by which State conventions select delegates, as long as the key element within that process fell within the structure. In other words, the selection process for the State conventions could not be outside of the structure. And I think that's workable.

Mr. THOMAS. In terms of the time frame or falling within the region and subregion, the six subregions you have in each of the——

Mr. LEVIN. Within the regions and subregions.

Mr. THOMAS. So, they would not get away from the cyclical aspect?

Mr. LEVIN. I don't propose that anybody——

Mr. THOMAS. Now, you know——

Mr. LEVIN. What?

Mr. THOMAS. The bill doesn't do that the way it's written.

Mr. LEVIN. If it does it, it's only by inference. And that's a long stretch. I would say that the bill doesn't do that now. It would have to be clear.

I don't want an escape hatch for any State.

As to the cost, let me just say that I have had a chance to work with clerks in cities and counties and on a State level. I think if we can provide some kind of certainty as to date and consideration of cost that, while there is kind of initial institutional resistance, eventually instead of resistance you get cooperation and commitment to make the system work.

Mr. THOMAS. I want to thank you for putting the thought through it. And I do think that a good provision is obviously, since it is going to be required, tying it to the party rules in terms of the way in which the decisions are made and not mandating some kind of a national structure for either voters required to go one way or another. There are a couple of other good points, but the automatic rotation and the others we may have to work on.

Thank you very much.

Mr. LEVIN. Thank you.

Mr. SWIFT. A couple of quick questions have just occurred to me.

One, I had a bill introduced a number of years ago which set up a scheme and then said a State did not have to have a primary. If it had one, it had to fit the standards within the scheme. But if a State, such as mine, chose not to get into all this elbowing under the basket about who goes first and all of that, if they wanted to choose their delegates by some system other than a primary and not play the game, it let them.

With yours, do you feel it's essential to the balance you're trying to, the representativeness you're trying to get, that you would need to require all States to have a primary?

Mr. LEVIN. No. There would be a requirement of participation either through a primary or through a caucus system, though Thomas suggests there could be variations in terms of selections to State conventions. But every State would be required to select the parties within their State delegates through a critical date established by law.

Mr. SWIFT. I have a second question. That is, the very thing we are trying to resolve here is the fact that we have started this proc-

BEST COPY AVAILABLE

ess earlier and earlier and earlier. My question goes to the idea, if we pass legislation, what should be the effective date? It seems to me we really are into the 1988 cycle, well into the 1988 cycle, both in terms of actual delegate selection that is going on in your State, and certainly with respect to the strategies of the various candidates. Do you think we could in fact put an effective date that would make it apply to 1988? Or are we now pretty much forced to look at 1992?

Mr. LEVIN. I am not certain we have talked about that. Here's my guess. I'm not sure how educated. If we acted within the next 5 or 6 months, it might be in time. It might. But it would have to be at least within that period of time.

The dilemma is this. It may be that order will only come after complete chaos. Maybe the chaos isn't complete enough. Maybe we have to just wait for some more mad scrambling, and we end up with a regional primary, which a lot of people in the South in both parties have some doubts about doing all at once. And with Iowa and Michigan and New Hampshire going earlier and earlier maybe we have to end up with a Presidential primary in New Hampshire in September of next year before people realize the insanity of the system.

But the problem with waiting for chaos to be so complete is that it means for 1988 talking about lotteries. It's really throwing the dice.

So, if I might suggest, I would hope you would very much push ahead as you're doing, that you might consider a timetable for action in terms of markup so we at least test the waters of reality early enough to implement it in 1988, knowing that the chances may be against that, but at least we've a leg up on 1992.

Mr. SWIFT. Yes, Mr. Thomas.

Mr. THOMAS. One additional question which you may or may not have thought about, and that is, I am not totalhy familiar with the system that your party has in the selection of so-called super delegates. My understanding is that the House of Representatives the last time around in its selection of the so-called super delegates did so even prior to New Hampshire. Would you be inclined to include them within a window? And would it have to then be by States and regions, or would that be a single grouping?

Mr. LEVIN. I would, leaving the parties to their own courses as long as there is representativeness, basically allow the parties to continue to allocate the delegate slots to elected officials and party officials. As to the date of them, the Democratic Party has already taken steps—I am not sure whether the Republicans have—so that the selection is not so early.

Mr. THOMAS. So, 1984 was a historical circumstance now, it will not occur prior to——

Mr. LEVIN. It has been changed.

But it seems to me that, as you dig into this, as you are doing and are so well equipped to doing, that that's a facet that has to be looked at. I think the representativeness in terms of timeliness should be applicable to all the delegates selected.

Mr. THOMAS. I think so, yes.

Mr. LEVIN. I am not quite sure how you do that, and I hadn't thought of it.

BEST COPY AVAILABLE

Indeed, this language isn't quite perfect then, because it's too much an implication that delegates could be selected by the national political parties. That has to be clarified, I think.

Mr. THOMAS. It's just that it's a little—again, getting all of the genie into the bottle, there are a lot of areas that we would have to deal with. But I think it does deserve continued narrow scrutiny.

I appreciate the time that you spent on it, helping us clarify our viewpoint.

Mr. LEVIN. Thank you. I think all of us would like to participate to the extent you think it useful.

Mr. THOMAS. Thank you.

Mr. SWIFT. Sandy, thank you very much.

Mr. LEVIN. Thank you.

Mr. SWIFT. You have been very helpful to the committee.

Our colleague from New Hampshire, the Honorable Judd Gregg. Your statement will be put in full in the record. You may proceed as you choose.

TESTIMONY OF THE HONORABLE JUDD GREGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. GREGG. Thank you, Mr. Chairman. It's a pleasure to be here today. I am beginning to know how the Japanese feel at trade meetings, with a bit of New Hampshire bashing that is taking place.

You know, it's a small State, and there are many of us who love it. I would put among the people who love it, I suspect, Jimmy Carter and Gary Hart, George Bush, Gene McCarthy, Ronald Reagan, people who have come to New Hampshire underfinanced, unknown, in many instances, without a national organization, without the anointment of the national press, hadn't been able to run a campaign which has brought them into the competitive realm of the Presidential politics in this country.

All the witnesses you have heard from today have made eloquent points and excellent points for the problem which we have for structuring our primary process. But none of the witnesses have talked about the American dream which generates the Presidential activity to begin with. And that is the fact that we do have a scenario in this country which makes it possible for anyone, with luck, with ability, to become President of the United States. And that scenario is juxtaposed today against a process which would essentially close out that American dream.

If you adopt any of these proposals, which denies the opportunity of the underfinanced, nonanointed, nonmedia-recognized individual to participate in the primary process, you have essentially closed off that dream. What New Hampshire gives this country and what Iowa gives this country, what other States that are small and are manageable from a finance standpoint, from a media standpoint and from a one-on-one campaign standpoint give this country and the political process is access, access to the American dream of becoming President by legitimate individuals.

Other people who, I suspect, participate in New Hampshire who would not have been able to participate if you go to a regional primary are people like Fred Harris, maybe Birch Bayh, maybe

BEST COPY AVAILABLE

George Romney, maybe Senator Hollings. The list goes on and on. There are usually in the early primary States 5, 10 candidates, of which usually well over 5 are very credible individuals who have a great deal to offer this country but who do not have money, do not have finances, and do not have the anointment of the Washington media or the national media and therefore could not possibly compete in a system which merged a whole group of primaries together and generated the type of costs which that would incur and required the type of national exposure which that would require.

Now, there have been some specific attacks on New Hampshire, as there always are: that it's too early; that it's not representative; and that it makes the campaigns too long because it is too early. I would just state this. I would be interested in when Mr. Nelson is going to draw his lot for setting up the process of primaries. I suspect the lots are going to have to be drawn at the convention preceding or before the convention preceding that election, 4 years early, because that's when the national elections begin. They don't begin because New Hampshire has an election at the end of February. They don't begin 4 years before that because of that date. They begin 4 years before that because somebody decides they want to be the President of the United States, and they know that in this country to become President of the United States today you have to do a phenomenal amount of groundwork. Whether you move that primary back 2 weeks, 3 weeks, or 4 weeks, that's not going to affect the decision process.

An example just recently would be the decision by Edward Kennedy to publicly state that he was not going to be a national candidate before 1986 elections occurred. That had nothing to do with New Hampshire. What drew that decision out was the fact that he was being driven by the national media, by the process which we are in, into the stage of a national candidate for President. And he had to get out of it then. The campaign was on for him, so much so that he had to get out of the campaign. It had nothing to do with the date of New Hampshire's election.

So, I think it's a bit specious to claim that the date of New Hampshire's election affects the date that people get into the elective process in this country.

As to representativeness, I think Mr. Levin makes a good point. There is no State that is totally representative of the rest of every other State in this country. The fact that we would be merged in a regional primary with Massachusetts and under Mr. Levin's program you might pull Massachusetts out as the representative of New England, would be a personal affront to those of us from New Hampshire, who consider Massachusetts to be about as antithetical in philosophical political activity as you can reach. All you have to do is study our two political processes to recognize that they are probably the most liberal State in the country, one of the most liberal States. We are probably one of the most conservative. They have the highest tax rate per capita; we have the lowest tax rate. They have a very regulated economy; we have a laissez-faire economy. The fact that we are in the same region maybe accentuates our differences because we recognize people who live in Massachusetts don't like New Hampshire's way of life, and people who live in

BEST COPY AVAILABLE

New Hampshire don't like Massachusetts' way of life in politics. Therefore, that just accentuates each other's approach.

So, I don't think that there is identity of regions. I don't think there is identity between States. I agree with that. But New Hampshire is not totally out of the mainstream, either, of the United States. We have our McDonald's and our Burger Kings. In fact, we are the fourth most highly industrialized State in the country per capita. We have more cars per people than California on a per capita basis.

As a practical matter, if you look at the record, New Hampshire has reflected the mainstream of American thought in Presidential primaries. No one who has not won in New Hampshire has been elected President since 1952. That is not because New Hampshire has set the patterns for national elections. It is because, I think, New Hampshire is reflective of the views of Americans generally and, as much as can be, is an adequate bellwether, at least at the early stages of the primary effort.

What this all really comes down to, as I have already mentioned, is an issue I would like to mention quickly, the issue of cost. If you go to a regional primary and any one of those regional primaries includes a major media market, you are talking about a campaign that is going to cost literally millions of dollars. California campaigns, as I understand it, for the Senate cost somewhere, to be effective, between $15 and $22 million. A campaign that includes New York City has the New York City media market, and you're looking at a campaign that will cost around $10 million.

In New Hampshire you can run a campaign and a very legitimate campaign for anywhere between $250,000 and $500,000. That gives a real leg up to the Jimmy Carters and the Gary Harts of this world who comes into an election, and the Gene McCarthys of this world, who come into an election and as a practical matter do not have the millions of dollars necessary to run a regional election.

So, I think you have got to look seriously at the issue of closing out the dark horse candidate. If you go to regional primaries, I think you do close out the dark horse candidate.

I would like to respond to a few of the criticisms that have been made and a few of the points that have been made by specific speakers.

I do think you have a problem with constitutionality. I happen to think that there is a certain right, States' rights issue involved here, and that you are going to find that you are preempting States' rights and exceeding the constitutional authority certainly of the parties by proceeding in a way which demands that the party caucus, party convention system be structured around a Federal election law.

The suggestion of Mr. Nelson's, as I have already mentioned, sets up a lot system of drawing lots. I don't see how you can draw lots and not throw the process into more chaos that it is now. He terms it quirks. The system may have quirks now, but all you're doing is exchanging one system of quirks, which has at least been affected by the people in the areas where they are being lived out, for a nationally imposed system of quirks. It makes little sense to me.

BEST COPY AVAILABLE

I would just return to my basic argument in closing and restate the fact that I think in looking at the national primary process, you are focusing on the wrong side of the coin, which is that you are focusing on the issue of what the different States' roles should be in the primary process as versus what the rights of the candidates are to be able to participate in the process. The bottom line is the election of an individual. If you shut out of the process a vast majority of the individuals who might want to participate at the early stages, you basically will have closed down the process and returned to a new form of basically bossism, where bossism, instead of being in the old Tammany Hall context of being determined by somebody in the city hall, it will be determined by somebody at NBC or ABC News who determines who is a legitimate candidate and gives that person the press necessary to compete in a regional primary.

Thank you for the opportunity to testify.

STATEMENT OF THE HONORABLE JUDD GREGG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, I appreciate the opportunity to be here today to testify before this Subcommittee on an issue that's important not only to the people of New Hampshire, but also to the people of this nation. It's important that the overall ramifications of this legislation be clearly understood.

This is another ill-conceived effort on the part of Congress to wrest control of the election process from the individual states. In this case, that state happens to be my own. Supporters of these bills want to water down the New Hampshire primary for three basic reasons: First: They say it allows New Hampshire voters to exert a disproportionate amount of influence on the election process, because of the attention the primary receives by virtue of being first. Second: These critics charge that New Hampshire should not host the first primary because it is not representative of the nation as a whole, and third: They claim the New Hampshire primary makes the campaign season too long and expensive. Let's take a look at these charges.

When I consider whether New Hampshire voters exert an influence beyond their numbers and whether they should be penalized for that by having their rights stripped away, I conclude: It is not the voters who exert the disproportionate amount of influence. After all, each voter is only casting one vote. Rather, it is the media that makes the primary a media event, which magnifies the election and makes it an event of greater import than it might otherwise be. Furthermore, what about the public opinion polls which use a sampling of perhaps two thousand people to gauge the sentiment of the nation? These polls receive an enormous amount of media attention, and candidates yearn to see their names at the tope of these as much as they hope to win the heart of the New Hampshire voter. These two thousand people represented in these polls are the ones who exert an influence that is out of step with their numbers. Even if you insist that New Hampshire does exert a disproportionate amount of influence in the presidential election process; and I question that; I would submit that it is a small price to pay for keeping alive the dream that, only in America, can anyone grow up to be President. An opportunity of that sort is, after all, what the New Hampshire primary really represents and what this nation is all about.

It's a chance for a person who considers himself or herself to be a legitimate presidential contender, but who has not been anointed by the national media corps or the Washington power base to come into a small state, campaign on a one-to-one basis and be competitive. New individual voter. In this era of big government and big media, the smallness of New Hampshire requires personal contact in a presidential campaign, which is a quality that should be cherished, rather than feared. If we decide to group all of the primaries together to make it impossible for a candidate to take part in a single, small state primarily early in the process, we are essentially saying that only the wealthy can grow up to be President, because only the wealthy will be able to afford to compete under such a system. If we go to a series of regional primaries, we can say goodbye to one-on-one campaigning and hello to government by the national media and Washington establishment.

BEST COPY AVAILABLE

We should also do some reading between the lines. What is really being said by the political leadership of this country is, "let's take New Hampshire out of the spotlight, and keep the process of electing a President in the hands of the few and the powerful within the party leadership. Let's make sure the dark horse does not have an opportunity to gather momentum and media attention in a small state like New Hampshire and thereby foul up all of our carefully laid plans." This is really what is being said in proposing that New Hampshire be grouped in with a series of other states in a regional primary. This message, if I may be so bold to say so, is arrogance in its highest form. The party leadership would tell the George Bushes, the Jimmy Carters, The Gary Harts of this land, all of whom entered campaigns underfinanced and without household names, "You will not be given a fair shot at the Presidency because the Golden Hands of the Leadership and the national media have not been placed upon your shoulder."

With regard to the question of representation—New Hampshire is not as unrepresentative as some would have you believe. New Hampshire is the fourth most highly industrialized state in the Union, the fastest growing state east of Mississippi, after Florida, and has more cars per capita than any other state. Furthermore, the state presents an opportunity for candidates to come face-to-face with a wonderful mix of metropolitan and rural voters. A large part of the state is rural, yet the southern region of the state is part of the great eastern megalopolis.

Another fact is that since 1952, no person has been elected President without first winning the New Hampshire primary. I wouldn't suggest that this means you have to win the New Hampshire primary to get elected President, but the fact is New Hampshire voters have demonstrated time and again their ability to select individuals who are palatable to the nation as a whole. The indisputable fact is that New Hampshire voters have a track record of which they are justifiably proud. Should they be penalized for this track record, and for their desire to continue to showcase their political acumen, simply because the national news organizations have decided that the media event that has become our presidential campaign shall start in New Hampshire? I think a decision to do so would be an arbitrary one based upon jealousy.

The claim that New Hampshire contributes significantly to the length of the campaign season and the cost of that campaign is, I believe, a false one. The campaign season really begins at the time an individual aspires for the Oval Office. From that point forward, the candidate, whether announced or not, is seeking out the television cameras; sometimes as much as two years in advance of the New Hampshire primary. For an example, we need look no further than Senator Kennedy's statement of several months back that he would not seek the presidency in 1988. That disclaimer became necessary because his actions and words were being framed in presidential terms a full three years before the election. The New Hampshire primary had nothing to do with it. Eliminating New Hampshire's key role in the process is not going to shorten the campaign season. Furthermore, New Hampshire is one of the few states where it is relatively inexpensive to campaign, because of its small area and population. A candidate is not forced to rely upon expensive media centers for exposure to the electorate. One can easily run a presidential primary campaign for between $250,000 and $500,000, which is far below the cost it would take to run a similar campagin in larger states.

Earlier this year the House passed a bill that would force states to keep their polls open until a certain hour on presidential election days. I criticized the measure as an infringement upon states' rights. The proposals before the Subcommittee today are no less an infringement upon those rights of individual states to govern their own elections. Congress seems intent upon nibbling away those rights one morsel at a time. Eventually, the states are going to be left without a cookie.

Nowhere is it written that Congress shall play a role in the nominating process. If the convention and party nominating process decide that New Hampshire and Iowa are outside the proper process, they can unseat the delegates at the convention. However, it should be up to the parties, and not Congress, to make such a decision.

The arguments I have raised before you today are not based merely on provincialism. New Hampshire serves a legitimate and serious national purpose; we as a nation need a first primary where the average person can compute on equal footing with the rich and powerful. My concern is that, until the electorate has spoken, we need to keep the process by which we choose a President as open as possible, to keep alive the dream that, "only in America * * *"

Mr. Chairman, Members of this Subcommittee, I thank you.

Mr. SWIFT. Thank you very much.

BEST COPY AVAILABLE

I was interested in your mentioning Fritz Hollings, who maintains that one of the reasons he didn't do better in New Hampshire was that nobody could understand him up there.

Mr. GREGG. Well, we had a governor, just before Mr. Hollings came up campaigning, who came from Georgia, Mel Thompson, who still has a very southern accent. So, I am not sure that was Mr. Hollings' problem.

Mr. SWIFT. Fritz said: I go around saying I'm Fritz Hollings, and they thought I was a German trucking company.

There is a lot that I suppose we could disagree with, but let me for the sake of argument accept the basic premise, that you need a small State where you can have some one-on-one campaigning, where the media costs are not so great, and where the area you have got to cover isn't so vast, and so forth, to help the Jimmy Carters and the Gary Harts. Why New Hampshire? Why not your sister State of Vermont? Why not spread that around from election to election? You know, if that's a valuable thing, why not take some small States where that's possible? Rhode Island would certainly be another. Why does it have to be New Hampshire?

Mr. GREGG. Well, I think New Hampshire has obtained the role out of a historical context and tradition, just like many of the other things which we do in this Nation that are tradition based. New Hampshire has a fairly strong tradition of holding the first primary. It has been one which, I think New Hampshire has fulfilled very efficiently and effectively for the country. I think you need only look at the track record of the State and really being very much on the heartbeat of the Nation on the issues of Presidential elections.

You can go through almost every 4 years and look at something that happened in New Hampshire that ended up being a reflection of the national mood. Gary Hart in 1984 was clearly a national mood in the Democratic Party that there was concern about the fact that, I think, Walter Mondale had sensed that he was being anointed.

Mr. SWIFT. You're disagreeing——

Mr. GREGG. Gene McCarthy in——

Mr. SWIFT. You're disagreeing with Sandy Levin then who said: I don't think Michigan can represent Mississippi. But you're suggesting New Hampshire can. Is that——

Mr. GREGG. What I am saying is that New Hampshire has, I think, done a very effective role of holding the first primary. This is a tradition which I see no reason to change.

Mr. SWIFT. Do they put something in the water in New Hampshire that gives the people this particular wisdom and the ability to——

Mr. GREGG. No, I don't think that we're any more thoughtful or politically astute than any other State. But I just think, why change things that work?

Mr. SWIFT. Because I guess some people think it's not working very well.

The other thing I suppose that—and you raised the constitutionality, and we hope to get some testimony on that before this series of hearings is through as well, because I think it is a legitimate question. But the way New Hampshire has written its law really

BEST COPY AVAILABLE

means it has written Federal legislation in this regard. At least it has written legislation that requires, in effect, all the other 49 States to adhere to it. It has basically said—I suppose we all played the old game when we were kids. It kind of grows out of, my daddy can beat up your daddy, and then it gets to, my daddy's house cost $1 million, and says, my daddy's house cost $2 million. And you finally say, well, my daddy's house cost a million more than your daddy's house cost. And you can't top that one. That was always eagle tops in those kinds of debates.

New Hampshire has done that. They just said, no matter when anybody else has it, we'll have ours a week earlier. That's really writing, in effect, law that controls the other 49 States. Is that fair?

Mr. GREGG. Well, actually, it doesn't work that way, as you know. Iowa has its caucus systems. Michigan is now moving to a system that it will occur before New Hampshire. So, as a practical matter, the way the structure is, all New Hampshire has is the first direct election of delegates by individuals. There are other States which have already preempted New Hampshire's role as far as being early States in the Presidential——

Mr. SWIFT. I understand that, and you state that accurately. But within the structures that you just stated, New Hampshire has basically preempted the rights of any of the other 49 States to do that.

Mr. GREGG. Well, I understand California had a bill in their legislature, and I am not sure that it passed. I think it did pass one house of the legislature. It said that they would hold their election on the same day that New Hampshire held ours or that New Hampshire scheduled theirs. Under New Hampshire law, that would have been valid. California could have held their election the same day.

Mr. SWIFT. What if they pass one that said that they will go a week before New Hampshire?

Mr. GREGG. Well, that wouldn't—New Hampshire's law would obviously take precedence over that, in New Hampshire.

Mr. SWIFT. I don't want to pursue that, obviously it gets ridiculous, but it does seem to me that New Hampshire is almost inviting Federal legislation when it unilaterally takes a position that does limit the ability of the other 49 States to even act similarly. So, in a sense, I am concerned about the constitutionality. But it would at least say that the State of New Hampshire raised a question that is perhaps forcing us to take a look at something that raises those constitutional issues.

The gentleman from California.

Mr. THOMAS. Thank you, Mr. Chairman.

I do think, though, Judd, your point is that, if California changed its primary to the same day as New Hampshire, then New Hampshire—although it has a 3-hour time difference, we could talk about Daylight Saving Time in the West or something, to make it equal—you would agree then that the news media and the candidates would probably spend more time in California than they would in New Hampshire, given the size of the State of California, the delegates that would be sent——

Mr. GREGG. Yes, I think that would occur. I think it would be unfortunate because I think you would shut out of the process the

BEST COPY AVAILABLE

people who could not raise the funds to compete in California, who did not have the millions of dollars, the Jimmy Carters and Gary Harts.

Mr. THOMAS. So, if another State opted to be on the same day that was larger than New Hampshire, somewhat so, your argument would hold as well? So, it isn't that you're against regional primaries; you're against any other State that's larger than New Hampshire doing it as well?

Mr. GREGG. We are perfectly willing to have you hold it on the same day. That's——

Mr. THOMAS. But the argument about the usefulness of New Hampshire——

Mr. GREGG. I think that New Hampshire has been bashed today because it has been reflected as unrepresentative. I think our comeback to that as a State is that New Hampshire gives access into the process for people who do not otherwise have access.

I think once you switch into either a regional primary process or if a big State decides to make the move, such as California may, it may go through the legislature the next time, tries to make the move of being at the same time as New Hampshire, then I think you have unfortunately set up a system where your lesser-known, non-national-media-oriented candidates are going to have problems.

Mr. THOMAS. Part of the rationale for maintaining New Hampshire's position, I believe, was, you said, since 1952 there had been no President elected who hadn't won the party primary in New Hampshire. I believe it's on page two of your testimony.

Mr. GREGG. Yes.

Mr. THOMAS. That may say something about the representativeness of New Hampshire. It may also say something about the timing of your primary.

What's New Hampshire's batting average in the general election, when it had to choose between the two party nominees for President? Can you say the same thing is true that since 1952 New Hampshire has been on the winning side, whether Democrat or Republican, of the Presidential choice? Which would give me some representative feeling of New Hampshire's ability to reflect the Nation.

Mr. GREGG. We have missed twice since 1952.

Mr. THOMAS. That's not as good as the——

Mr. GREGG. It's not as good. It's only 80 percent instead of 100. It's still pretty good.

Mr. THOMAS. OK.

I found it difficult not to mention Illinois's primary this morning, which took place yesterday, in terms of the selection of dark horses, and your comments about New Hampshire and the uniqueness of your small State's ability to allow people who are dark horses, for example, with very little money to emerge on the national scene and your comments about bossism. I would refer folks to the comments of Mr. Stevenson in Illinois about how unacceptable it is if the folks decide that they want to go different than the party bosses dictate to them.

I would also indicate that a couple of weekends ago now we were at the quadrennial party convention, in a party meeting at Harvard to discuss the problems we have with the parties. Almost to

BEST COPY AVAILABLE

an individual on the Democratic Party side, the national party people were opposed to a regional primary for, in part, fear of the kind of candidates that might be generated that would not be representative perhaps, from either end of the spectrum, to those who believe they have their finger on the pulse beat of the national Democratic Party and what would be acceptable to it.

So, I would suggest that your arguments in defense of New Hampshire, for narrow purposes as the Representative from New Hampshire, are ones that are shared by others even in terms of the regional primary. I think, if we are in search of a procedure which will select the kind of candidate we think ought to be selected, maybe that's the wrong road to go down, for whatever good and worthy reasons you might want to present for going down that road. There is a lot to be said for uniqueness and diversity in the system.

That still doesn't mean that I accept all the things you said about New Hampshire in terms of its unique quality, but I do think we have got to focus on the fact that regional primaries are not going to solve some of the problems that some folks are now thinking they are going to solve. I think it is a question we ought to look at.

I will go back to my concerns about the national party convention. Of course, no one has talked about the usefulness of the national party convention and to what extent it is going to be modified by these procedures that are going to be imposed on States and the degree of uniformity that we are now going to have that we don't have now.

Mr. GREGG. I think those are very, very valid points. In fact, once you start to structure it, you are immediately defining who the winner is going to be, which is one of the points you made.

Second, once you move to a regional primary, as you said in your opening statement, you are only half a breath away from a national primary. Substantively, there is no difference really, because you're ending up requiring candidates to have obtained funding and national recognition before they are players in the regional primary.

Mr. SWIFT. The gentleman from Minnesota.

Mr. FRENZEL. Thank you, Mr. Chairman.

I want to thank the distinguished gentleman from New Hampshire for his testimony and assure him that the authors of some of this wonderful legislation did not do so in an attempt to degrade New Hampshire or its people. The gentleman's testimony is perfectly rational and expected under the circumstances. I know that New Hampshire wants to do its own thing, and I can't blame it for wanting to do its own thing.

I agree that the gentleman never intended to claim for people of New Hampshire that they had some gift of prognostication. As I read his statement here, it merely says that they ought to have the opportunity to have their primary when they want to and that it offers opportunities because of its size that wouldn't be available in other States.

Mr. GREGG. That's a good summation. I appreciate that.

Mr. FRENZEL. I thank the gentleman for his testimony.

BEST COPY AVAILABLE

If this bill has as much success this year as it has in the past, New Hampshire will continue to do its thing for a long time in the future.

I yield the balance of my time.

Mr. GREGG. Thank you.

Mr. SWIFT. Thank you, Mr. Gregg. You have done a good job defending your State.

Mr. GREGG. Thank you.

Mr. SWIFT. We appreciate your testimony.

Our next witness is Dr. Stephen J. Wayne, who is professor at George Washington University in the Department of Political Science.

Dr. Wayne, welcome to the committee. Any prepared statement that you have will be made a part of the record. You may proceed in any fashion you choose.

TESTIMONY OF DR. STEPHEN J. WAYNE, PROFESSOR, DEPARTMENT OF POLITICAL SCIENCE, GEORGE WASHINGTON UNIVERSITY

Dr. WAYNE. Thank you, Mr. Chairman.

I certainly appreciate the opportunity to testify before this subcommittee. I would like to try to put the discussion in a somewhat larger context than I have presently heard this morning. It seems to me that the rules for setting up the procedures for nominating delegates have a great deal of influence on the type of nominee that is selected. You really have to ask yourself what kind of nominee do you want before you start monkeying around with the rules.

What qualifications are most desirable? Do you want a candidate with national experience who's sophisticated in the ways of Washington, or a party leader who can command the support of a fair number of people with a similar political persuasion, or the people's choice defined in terms of the intensity of one's supporters or defined in terms of the number of popular votes in any given State?

I would like to argue that these qualifications are not mutually exclusive or inclusive. If parties or the American people desire a candidate with national experience, what needs to be done is to tighten the time frame, concentrate the elections, require a high threshold, facilitate participation by independents, and not be concerned with costs. If what you want is an experienced party leader, then give the States flexibility in determining their mode of election, including the date of their contest, their rules for filing, the apportionment of delegates, and how that delegation behaves at the convention.

If you want to try to get a candidate who will represent the views of a majority within his or her party, then what we need to do is conduct a national primary with a runoff provision if the plurality winner doesn't get 40 percent of the vote.

If what you want is a popular choice based on sectional differences, then perhaps the systems of regional primaries that have been proposed would suffice, so long as we had a unified system of proportional voting within the States, probably aggregated by Congressional districts with a minimum threshold.

BEST COPY AVAILABLE

If what you want is a popular choice sensitized to the different coalitions within the country, then we need to impose a window but allow flexibility to operate within it.

It seems to me that, whatever rule or whatever law this committee may try to pass, at least the ones that I have examined, will not probably affect the amount of money that is spent, will probably not affect the amount of time candidates spend campaigning, and probably won't affect the nature or the impact of the media coverage. Nor do I believe that any of these are major problems. In 1984 eleven Democratic candidates spent almost $70 million n their quest for the Democratic nomination. Seventeen million people participated in the primaries and several other million in the caucuses. It comes out to about $4 a vote. We pay more for going to a first-run movie, as much for a fast-food lunch.

The costs of American elections on a per-capita basis are far less than those of most other democratic societies. We can afford more expensive elections, but I don't think we can afford less expensive ones.

The fact that our campaigns are long and are arduous is not a product of a particular rule. It would not be affected if we set up a regional primary system. It is the entire system that has developed, beginning probably in the mid-1950's, that forces prospective nominees to demonstrate their partisan support and their general election potential by making popular appeals. If we had party leaders choose the nominees as we did in times past, the process wouldn't be as long. It wouldn't be as public. It wouldn't be as expensive. But the nominees would not nearly be as sensitized to the public moods, opinions, or attitudes of the voters as they are today.

If you tighten the primary or caucus period, you are probably going to increase the length and the costs of the campaign. Instead of making frequent trips to Representative Gregg's State, New Hampshire, and to Iowa and to every other straw vote that seems likely to be covered by national or local media, the candidates are going to have to go to all the States that are holding primaries or caucuses at that particular time. Moreover, the key, it seems to me, is not when the primary or caucuses are held but when the filing date is.

Put yourself in a position that Gary Hart put himself in in 1984. By, the time the Florida filing date was established, he didn't have his campaign set up. So, he had no delegates to file. So, New Hampshire did him no good in Florida as far as delegates were concerned.

It seems to me that you have to field candidates in all of those States. You have to mount major media efforts. That would be a major difference.

One of the advantages of our system now is that some States permit door-to-door and grassroots campaigning while others facilitate media campaigns. The balance is probably good. If you had a regional primary you would have to run media campaigns in all the States.

I also think that the large States would receive disproportionate influence and resources if you held regional primaries. The reason is that the bias of the electoral college, which favors the large

BEST COPY AVAILABLE

States, would be extended into the nomination process. I am not sure that you want to do that.

Nor do I think that the media would be content to wait for the first real votes before they start giving attention to the contest. The media focus right now is on the horses and the early line as illustrated by all these idiotic straw polls that we are going to read about over the next couple of years. Can you imagine the time the media would have in reporting the results, interpreting them for 6 to 10 States holding primaries on the same day? If you can't, just review the reporting and interpretation of the results on "Super Tuesday" in 1984.

I don't believe that legislation to establish regional primaries or limit the period would cut costs, would cut campaigning, would reduce coverage. It would have some other consequences, however, some good, some bad.

On the negative side, I think regional primaries would exacerbate sectional differences and sectional rivalries; it would encourage sectional candidates, if their section came first, to make a name for themselves; and it would produce many more candidate organizations to rival the party organizations, further weakening the party structure, which I don't think we want to do.

Based on a point that Representative Thomas made earlier, it seems to me that, if you have these regional primaries and you have proportional voting, the emergence of the consensus candidate within the party might be impeded. That would perhaps give the convention more of a decisionmaking and less of a decision ratification role. Maybe that's good, maybe it's not. But it certainly wouldn't decrease the cost, the time, and the media coverage of the contest. In fact, it would do just the opposite.

On the plus side, I think regional primaries would concentrate the campaign, might encourage turnout by a regional media blitz, and thirdly, would more closely reflect the popularity of candidates within their regions.

Would the eventual nominee be more representative of the party rank and file? Would the eventual nominee be a more popular choice? Would he or she be a more effective party leader, a more qualified Presidential candidate? I don't know. But one thing is certain, and we can see this with the finance law: every time Congress changes the law, something unanticipated results.

That brings me to my final point and to the question that you referred to earlier about the constitutionality of these laws. I am not going to comment on the latter because I am an attorney. But does Congress really want to get into the business of choosing the party nominees? It's one thing to expand suffrage and to do so by constitutional amendments. It's another to regulate the financial aspects of campaigning in the primaries by legislation and produce laws which I think most people would regard as a very mixed blessing. But for Congress to determine when elections for party nominees can be held and to establish rules that in the case of one law that I read requires independents to participate, strikes me both as unnecessary and going too far.

My own opinion is that the parties should be encouraged to devise their own rules for the selection of their nominees. I think Members of Congress should play a very active role in this. They

BEST COPY AVAILABLE

should help shape the process but within the party and not outside of it. The knowledge, the experience, the influence that Members of Congress have should be directed toward the selection of well-qualified nominees who lead as well as follow, who will be able to articulate party goals and at the same time translate them into public policy, and who can build support both within the Washington community and outside of it.

I think we have a problem with efficient government today in the United States. If party and President cannot unite what the Constitution and what the pluralism of our political system separates, then effective government cannot be achieved and sustained, at least not for long.

STATEMENT OF DR. STEPHEN J. WAYNE, PROFESSOR OF POLITICAL SCIENCE, GEORGE WASHINGTON UNIVERSITY

Mr. Chairman: I appreciate the opportunity to testify before this subcommittee. The issue that the subcommittee is considering, the selection of presidential nominees by the major parties, is critical to the vitality of our democratic system and to the efficient operation of our form of government. Unless the nominees are well qualified, unless they can generate loyalty within their party, unless they can build and maintain broad coalitions of public support, they will be unable to win, and if successful, to govern.

The problem in the last decade and a half is that the nomination process has emphasized public participation and representative selection at the expense of party leadership and Washington experience. Successful nominees (until 1984) have tended to be those who appeal to the rank and file on the basis of their new messages, their new agendas, and their new and distinctive styles of leadership. Being associated with the "old crowd" has clearly been considered a liability.

My point is that objectives of the nomination process have changed. Before you alter the rules you have to reconsider these objectives. To do otherwise is to put the cart before the horse.

Ask yourselves, what qualifications are most desirable for a nominee to possess? Do you want a candidate with national experience sophisticated in the ways of Washington? Do you want a party leader who can command the support of those with a similar partisan persuasion? Or do you want the people's choice defined in terms of the intensity of his or her supporters or the votes of the populace as a whole?

These qualifications are not mutually inclusive or exclusive. For a candidate with natural experience, you need to tighten the time frame, concentrate the elections, require a high threshold, facilitate participation by independents, and not concern yourself with costs. For a party leader, you should allow states flexibility in determing their mode of selection, including the date of their contest, their rules for filing, the apportionment of delegates, and the conduct of the delegation at the convention. For a majoritarian selection, conduct a national primary with a run-off provision if the plurality winner doesn't receive at least 40 percent of the vote. For a popular choice based on sectional differences, have regional primaries with a unified system of proportional voting, aggregated by congressional districts with a medium threshold (about 15 to 20 percent). For a popular choice sensitized to national coalitional interests, impose a window that allows the present system to operate freely within it.

Don't deceive yourselves. Changes to the rules will probably not affect the amount of money spent, the time candidates campaign, or even the nature and impact of media coverage. Nor do I believe that these are major problems. In 1984 eleven Democrats spent almost $70 million on the 17 million people who voted in the primaries plus all those who participated in the caucuses. That's probably less than $4 a vote. We spend more money going to a first-run movie and as much for a fast food lunch (neither of which sustains the interest nor contains the nourishment that elections do for a democratic society). In fact, the costs of American elections on a per capita basis are far less than those of most other democratic countries. We can afford more expensive elections; we can't afford cheaper ones.

That presidential campaigns are long and arduous is not primarily a product of a this or that rule; it is a consequence of a system that forces prospective nominees to make popular appeals to demonstrate their partisan support and electoral potential.

BEST COPY AVAILABLE

Were party leaders to choose the nominees as in times past, the nomination process would not be as long, as public, or as expensive but neither would the nominees be as attuned to public moods, opinions, and attitudes.

Tightening the primary/caucus period might actually increase the length and costs of campaigns. Instead of frequent trips to Iowa, New Hampshire, and every straw vote covered by the media, candidates would have to go to most if not all the states holding their election on that first Tuesday. They would have to field organizations in those states and, of course, mount media efforts in most. Naturally, the large states would receive disproportionate attention and resources, extending the bias of the Electoral College to the nomination process.

Nor do I think that the media would be content to wait for the first real votes before covering the contest. Their focus would continue to be on the horses and the early odds as illustrated by those idiotic strawpolls. And can you imagine the ways in which the results of 6 to 10 state contest held on the same day would be reported and interpreted? If you can't, review the reporting of Super Tuesday, 1984.

In short, I do not believe that legislation to establish regional primaries or even limit the period in which primaries and caucuses could be held would cut costs, campaigning, or coverage. I do think, however, it would have other consequences, some bad, some good.

Regional primaries might exacerbate sectional rivalaries, encourage sectional candidates, and produce more organizations to rival those of the state and national parties. Moreover, they might impede the emergence of a consensus candidates, thereby extending the process through the convention and increasing not decreasing costs, time, and media attention.

On the plus side, regional primaries could facilitate a more concentrated campaign than the present system. Turnout might be encouraged by the regional media blitz. The allocation of delegates would probably reflect the popularity of the candidates within the area.

Would the eventual nominee be more representative of the rank and file, a more popular choice, a more effective party leader, a more qualified presidential candidate? I don't know. One thing is certain, however. Every time the law is changed, unanticipated consequences result.

Which brings me to my final point—Does the Congress really want to get into the business of choosing party nominees? It is one thing to expand suffrage and to do so by constitutional amendment; it is another to regulate the financial aspects of the campaign by legislation, laws that most concede have produced very mixed blessings. But for Congress to determine when elections for party nominees can be held and establish rules that permit independents to participate in them strikes me as unnecessary and going too far.

Let the parties devise their own rules for the selection of their nominees. Members of Congress should help shape the process within the parties not outside of them. The knowledge, expertise, and political influence of Members of Congress should be directed toward the selection of well qualified nominees who will lead as well as follow, who will help articulate party goals and translate them into public policy, and who will build support within the Washington community as well as outside of it.

It is my belief that if party and president cannot unite what the Constitution and the polity divide, then effective government cannot be achieved and sustained for long.

Mr. SWIFT. Dr. Wayne, thank you very much.

Gentlemen, we have a problem. Dr. Wayne had told us earlier that he has to leave by 11:30. We have a vote. If we rush over and back, it's still going to consume 10 minutes or more. We have 9 minutes left before we have got to go vote. Do you want to try to work in a few questions now and then let Dr. Wayne go? OK.

I recognize the gentleman from California.

Mr. THOMAS. Thank you.

Dr. Wayne, I like your testimony, so I won't have many questions about it. However, I would appreciate opening up a dialog because you have not given us the kind of narrow criticisms that I think I would like to hear from you, both pro and con. In terms of some of the options, I agree with you that some of the legislation goes far beyond what we ought to even be considering in terms of

BEST COPY AVAILABLE

moving people who have made a choice—to register as an independent—and then forcing them into one or another arrangement and putting all kinds of strictures on behavior that we ought not to be into.

You also indicated, I think, a point that we lose sight of. That is, really, political parties are outside the Constitution. We have had to accommodate Government and parties over the years. Some of the accommodation that I now see being offered is either too cozy or too bothersome in terms of not allowing the parties to make the kinds of decisions that they want to. However, the other side of the coin is, as Representative Levin said, the selection of President is too important a question. Again, I hark back to the Illinois situation. Maybe we need to get some more grassroots input, because choices are made. We may not always like the choices, but I thought in a democracy—small d—it was a quantitative decision and some folks on a qualitative basis are now passing judgment on those quantitative decisions.

This is an area that I appreciate your go-slow attitude and look forward to some more specific comments from you. Thank you.

Mr. SWIFT. If you would be so kind, I would like to submit one question to you in writing that you could respond to in writing and save the time here. It deals with a question I raised earlier. Between the Udall bill's more limited approach and the very detailed regional primary approaches, I am wondering if there is some value to that in which you might in fact feel going beyond that is inappropriate.

I will submit that in writing and if you could respond in writing, that would be excellent.

[The information follows:]

APRIL 7, 1986

DR. STEPHEN J. WAYNE,
Professor, Department of Political Science,
George Washington University, Washington, DC.

DEAR DR. WAYNE: I would like to thank you for your participation in the hearing held on March 20th regarding presidential primaries. We appreciate the help you have given the Subcommittee in its work on this subject.

As I indicated at the hearing, I had one other question that I did not ask in the interest of time, since I know you had to leave by 11:30. As I mentioned, though, I am interested in the Udall bill, particularly in comparison with the others. While there clearly could be some problems with the detailed regional primary approaches—and adoption of one of those proposals might be inappropriate at this time—is there some value in the limited approach of the Udall bill?

Also, enclosed is a copy of your testimony from the transcript of the hearing. Please review it and make any necessary grammatical corrections.

Kindly return the corrected copy to the Subcommittee on Elections, U.S. House of Representatives, 802 House Annex 1, Washington, DC 20515. We would appreciate it if you could have it here by May 15th.

Thank you again, and best regards.

Sincerely,

AL SWIFT, *Chairman.*

Enclosure.

BEST COPY AVAILABLE

GEORGE WASHINGTON UNIVERSITY,
Washington, DC, May 12, 1986.

Hon. AL SWIFT,
Chairman, Subcommittee on Elections, Committee on House Administration, House of Representatives, Washington, DC.

DEAR CHAIRMAN SWIFT: While I oppose Congress' imposition of regional primaries on the parties for the reasons I explained in my testimony before your subcommittee, I have mixed feelings about the Udall bill. Its primary benefit would be to reduce the disproportionate influence that Iowa, New Hampshire, and other pre-window states seem to have on the selection of nominees. That is good. The principal disadvantage is that the imposition of a window, combined with the tendency to front-load, would increase organizing and fund-raising efforts in the prenomination years and require a media campaign by prospective nominees. It might even be the forerunner to a de facto national primary or regional primaries if most states front-load.

From the perspective of democratic theory, the imposition of a window would probably result in the successful candidates being the choice of a larger segment of the public at the beginning of the process. It would also shrink the pool of potential nominees. Under the circumstances, nationally recognized candidates would be advantaged.

On balance, I think the benefits of a window (particularly, if front loading could be prevented) outweight the drawbacks. However, I still have qualms about Congress legislating this change on the parties. The fact is that the early states exercise disproportionate influence because the electorate allows them to. A more interested, more informed, less personality oriented, more issue conscious citizenry is what we really need. You can't legislate these attributes on the electorate.

I am returning a slightly edited version of my testimony to your committee. Thank you for inviting me to testify. If I can be of any further help, please feel free to contact me.

Sincerely,

STEPHEN J. WAYNE, *Professor.*

Mr. SWIFT. The gentleman from Minnesota.

Mr. FRENZEL. I have no questions. I just want to thank the gentleman for his testimony.

Mr. SWIFT. Thank you very much, Dr. Wayne. We appreciate it.

The subcommittee will stand in recess until immediately after this vote.

[Recess.]

Mr. SWIFT. The subcommittee will come to order.

Our final panel—and we thank you for your generosity in waiting while we had that terribly important vote on the Journal. I am happy to welcome Joseph Prather, who is Senator and President pro tem of the Senate in the State of Kentucky, and Max Cleland, who is the Secretary of State of the State of Georgia.

Your prepared statements will be made a permanent part of the record. We will begin with Senator Prather.

TESTIMONY OF SENATOR JOSEPH PRATHER, PRESIDENT PRO TEMPORE, KENTUCKY STATE SENATE

Mr. PRATHER. Thank you so much, Mr. Chairman and members. I am proud for the opportunity to be here as President pro tem of the Kentucky Senate and as a representative of the Presidential primary task force of the Southern Legislative Conference, the Council of State Governments.

I will make my remarks brief and then would be happy to join in with any discussion that might be helpful to the committee.

Our effort toward the primary, the Southern primary on the second Tuesday in March, began some several months ago or even more than a year ago when many of the leaders from the various

BEST COPY AVAILABLE

States—and I am talking about the legislative leaders—joined together in discussion on how we might bring an added emphasis to the Southern part of the United States concerning the delegate selection process leading up to the conventions. I know that in Kentucky, and I am a former State Democratic Party chairman also, I have found frustrations in a small State such as Kentucky. There is a feeling that we were insignificant in the whole process because very little attention was paid to the views that we might have and because our number of delegates were not enough in itself to cause the candidates to pay a great deal of attention.

We realized that we had a great deal in common with many of the other States who have joined our effort toward the Super Tuesday primary. So, it only made sense to us that we should join that discussion and see if we could not find some common ground and a reason to join together with the other southern States. We found in a meeting just a few months back that there was unanimous support from the legislative leadership in those various States in pursuing the idea of the second Tuesday in March primary for our region.

In Kentucky, the Governor has already signed the primary bill. I understand that in Virginia, Tennessee, and Missouri the general assemblies there have passed legislation that has now gone on to their Governor, where they will then join Kentucky, Alabama, Georgia, and Florida. So, I think we are assured of seven States with several more that will probably make that step. I know the State of Texas in particular with a large number of delegate votes indicate that they will be coming on board as soon as they have the opportunity to convene in session.

We feel that this is going to give a region that does have a great deal in common and that can speak with a unified voice an opportunity to have that voice heard more fully by the candidates who will be offering themselves for the Presidential nomination.

We also recognize that, at least for now, we will have the privilege of being early in the nominating process, whereby we hope to have more impact. Now, I understand that as a result of our action, other regions could do the same thing and that that ultimately may result in the necessity for action by Congress concerning some version of the legislation that I have heard discussed this morning. But if that is the case, so be it. We think the regional idea is a good idea. We think that the people are the real winners because we think the added emphasis is going to mean that the voter turnout is going to be greater. You're going to have greater participation, and I think that's what it's all about.

I believe that, when you increase participation and when you involve more people, that negates the argument that I hear that says we will lose control if we let this go to the people and let them have a greater opportunity to become involved. Frankly, I thought that that's what we were supposed to do, and that's what we are trying to do in our efforts toward Super Tuesday.

Mr. Chairman, I thank you for the opportunity to be here.

Mr. SWIFT. Senator, thank you very much.

Secretary Cleland.

BEST COPY AVAILABLE

TESTIMONY OF MAX CLELAND, SECRETARY OF STATE, STATE OF GEORGIA

Mr. CLELAND. Mr. Chairman, thank you very much.

I would just like to second the remarks of my distinguished colleague from Kentucky. He said a lot of things that I have thought about and people in my State have thought about, particularly in terms of better voter participation and better voter involvement in the whole Presidential selection process. My State has the distinction, in the 20 years leading up until 1984, of sharing with South Carolina the leadership in being virtually dead last in voter turnout in the Nation. That's in the general election. We participate very poorly in terms of public participation in our State in the Presidential selection process called the Presidential preference primary.

I come to you today as the chief elections officer from the State of Georgia as Secretary of State. We were one of the three States that ultimately got the tag of being part of Super Tuesday in 1984. I might say to you, Mr. Chairman, that that was completely by accident. We were not that smart. But now we're not that dumb. So, we think that, with a little forethought, we can combine our efforts and make it easier, not harder, to campaign in the Southeast, easier on the candidates, easier of the media to focus on the issues, and easier on the public and not have them put their track shoes on every time they turn around and face a Tuesday somewhere.

I happen to feel that the present system, which I have participated in—I covered every major primary State in this Nation except Maine in 1980. I can tell you that the present system is the most chaotic, unorganized, and patchwork system in the Western World used to select nominees for a Nation's top elected position.

The concept of the individual State primary is sound. When the State of Florida initiated a Presidential preference primary in 1901, it was considered a very good idea. Other States, Wisconsin in 1905, Pennsylvania in 1906, and Oregon in 1910, followed. What has happened, though, is that, since then the implementation of these individual State primaries and caucuses has led to disaster.

From the total of 17 primaries in 1968, the number has grown to 30 in 1976 and a record number of 37 in 1980. Now about 75 percent of the delegates at our national conventions are chosen in primary voting. The growth of the system was so fast, once the snowball began to gain momentum, very little if any thought was given to any orderly coordination of the dates for the primaries.

Today a candidate for the Presidency must embark on a campaign which lasts well over 2 or 3 years, costs millions of dollars in travel, and is dictated by more than 50 different sets of rules and regulations and laws. Candidates are required to at least extend themselves in a 6-month-long marathon that tends to focus more on the culture or idiosyncrasies of our State—and I have seen it in my State—idiosyncrasies like blowing gnats in Georgia or shucking oysters in Maine instead of dealing with the problems that face the country.

There is really no order or rhyme or reason to the current timetable of primaries and caucuses.

BEST COPY AVAILABLE

A prime example of the 1976 primaries: On one single Tuesday simultaneous primaries were held in California on the west coast, New Jersey on the east coast and Ohio on neither coast. How a candidate is able to focus on the issues while wearing himself or herself down because of timing and geographic considerations is beyond me.

These are some of the practical reasons why I, along with the Council of State Governments and the Southern Legislative Conference, have pushed so hard for the past 2 years for a regional primary concept. The Congress has reviewed some 300 measures in the last 75 years to regionalize the primary system, but such a system has not become reality.

We in the South now are beginning to create our own regional primary which we believe will allow candidates time to discuss substantive topics with our people, alleviate some of the massive costs of a Presidential campaign and, more importantly, focus the campaign and thereby increase voter awareness and turnout.

I would support some system of national regional primaries, but I am also convinced that at the present time, given the complexities of differing election laws in each State and the mandates of individual State constitutions, that a national system cannot be put in place by 1988. But I also think—and the Southern States, I think, will show—that area States can ban together for a unified region for a good cause.

Mr. Chairman, I will be glad to work with you and your subcommittee in any way to make sure that we come up with some kind of nominating process that we think is the best possible.

I do support the concept of the regional Presidential preference primary.

STATEMENT OF MAX CLELAND, SECRETARY OF STATE, STATE OF GEORGIA

Mr. Chairman and members of the subcommittee, I appear before you today in my capacity as chief elections officer for the State of Georgia and as a citizen concerned about the most chaotic, unorganized, and patchwork system in the world used to select nominees for a nation's top elected position.

When the State of Florida initiated a Presidential preference primary as a means for national convention delegate selection in 1901. It was perceived as viable alternative. Other States—Wisconsin in 1905, Pennsylvania in 1906, Oregon in 1910, and then many others—followed suit because they decided the alternative was better than any system that had been devised.

Indeed, the concept of such a system was sound. Its implementation, however, was disastrous.

From the total of 17 primaries in 1968, the number grew to 30 in 1976, and a record number of 37 in 1980. Now about 75 percent of the delegates at our national conventions are chosen in primary voting. The growth of the system was so fast once the momentum hit in the late sixties, that very little, if any, thought was given to an orderly coordination of dates for primaries.

Today, a candidate for the Presidency must embark on a campaign which lasts well over two years, costs millions of dollars in travel and organizational expenses, and is dictated by more than 50 different sets of rules, regulations, and laws—all in an effort to be allowed to represent his or her party in the general election.

Candidates are forced to hop from city to city and State to State in a 4-month-long marathon that tends to focus more on the culture or idiosyncrasies of each State—like blowing gnats in Georgia or shucking oysters in Maine—instead of on the problems facing or Nation today.

There is no order, rhyme, nor reason to the current timetable of primaries and caucuses.

A prime example from the 1976 primaries: on one Tuesday, simultaneous primaries were held in California on the west coast, New Jersey on the east coast, and

BEST COPY AVAILABLE

Ohio on neither coast. How a candidate is able to focus on issues while wearing himself or herself down because of timing and geographic considerations, as in this case is beyond my comprehension.

Those are the principal reasons why I, along with the Council of State Governments and the Southern Legislative Conference, have pushed so hard for the past 20 years for a regional primary concept. As many of you know, the Congress has reviewed some 300 measures in the past 75 years to regionalize the primary system. But such a system has not become reality.

We, in the South, have moved to create our own region, which we believe will allow candidates time to discuss substantive topics with our citizenry, alleviate some of the massive costs of a Presidential campaign, and most importantly, increase voter awareness and, thus, turnout.

I would support some system of national regional primaries. But I am convinced that at the present time, given the complexities of differing elections laws in each State and the mandates of individual State constitutions, a national system cannot be put into place by 1988. But I also think, and the Southern States have shown, that area States can ban together for a unified region without Federal legislation.

Mr. Chairman, I will be more than happy to work with your subcommittee in any way you may desire to see that our nominations process is the best possible we can devise.

Mr. Chairman, I thank you.

Mr. SWIFT. Thank you very much.

What I would like to do, since you're the last panel, is just kind of enter into a discussion here as much as anything else and explore this a little bit.

My current preference would be to approach this thing in stages and somewhat slowly at first. I am fascinated by what the southern Presidential primary's effect is going to be. We have all kinds of opinions cast around: that it is really going to take away from New Hampshire; it's going to in fact exaggerate New Hampshire's effect, and all that. We don't know. It is going to be kind of interesting to find out how it works.

It would also seem it might be possible that, if it really works well, then pretty soon you're going to have a northwest regional primary. And we won't want to be bringing up the rear, so we could do it on the same day that you all do. And then pretty soon you get a de facto national primary. And some of the problems that have been discussed here by some of the witnesses with that concept may come into effect.

I am not sure the Federal Government isn't going to have to play a larger role in writing the ground rules at some time, but I don't know that we need jump into it full blown at this time, but let some of this unfold and try to be more precise.

All of that is by way of coming back to the question: What do you think of the Udall proposal, which does not in fact establish regional primaries by Federal fiat—at this point, it would leave that option open for future legislation—but would set a window in which the primaries would have to take place so that the States of Iowa and New Hampshire would not be getting out in front no matter what you guys do or any other States do, and try that as a start? And then see how regional primaries put together by States work. And see if that tends to bring order to the process or whether it merely spreads the confusion. I don't think anyone can predict that with certainty.

Does that seem like a logical first step? Or as some of the others have suggested, do you think it's too little and too late?

61-645 O - 86 - 3

BEST COPY AVAILABLE

Mr. CLELAND. Mr. Chairman, as a matter of fact, the concept of a relatively tight window is one of the things that I see as an argument for the regional Presidential preference primary with or without legislation along the lines that Mr. Udall calls for.

I happen to favor a tight window because I think elections now are too long. We burn out our candidates, the media and the voters, all pretty equally.

I am in favor of a tighter window than we have now. I think the regional Presidential preference primary concept, whether put together voluntarily by the regions and the States in that region or by congressional intervention, is basically a good concept.

Mr. SWIFT. The motivation for establishing a southern regional primary, was that primarily to try and get around the very early atypical States such as New York and Iowa, or was that really in order to provide more clout for your whole region in the overall process, or a combination of both? What are you trying to get at primarily with that approach?

Mr. PRATHER. I think probably a combination of the two. First off, I would be less than upfront if I didn't tell you that it was appealing to find that we could have an early date where we thought probably the impact of the southern would be greater than it might be otherwise. But beyond that, I think we recognize that we are a region of this country that has many common goals, many common needs, and that we could agree, which we have done, unanimously, as far as the legislative leadership is concerned, to join together to try to have more clout and further discussion with the candidates of the vital issues that affect our region. And we hope to eliminate some of the patchwork that we have found in our current primary process that I think is making a mockery out of the system. I found, not only as a legislator but as a party chair, that indeed the nomination process is a patchwork where you find candidates that have to skip across the country, trying to determine where on a given day their emphasis should be placed, rather than having the ability to do better campaign planning, to have considerably less expensive travel, to address these issues in a manageable number of States with fewer staff, and to have a concentration of media that would not, hopefully, be as expensive.

Our goal is two sided. First, we think that it is an advantage to the candidates. Second, we think it's an advantage to us in speaking with one voice. Obviously, we were going to take advantage of the early date, since that was out there for us.

Mr. SWIFT. The irony is, the more successful you are, the more other regions are going to want to do it and do it early in order to have their regional input.

Mr. PRATHER. Well, I believe tightening the window, as you mentioned earlier, is a logical step. I agree that that should be done. Now, whether it's the Udall bill or some other version, I would leave that to your judgment, but I think that is a logical step.

I think that it would be impossible for you to act on the overall question of regional primaries from where you sit before 1988. But I do think that you are going to be able to see a trial run that we are in the process of putting in place that would answer some of your questions. I have found that many of the notions that are put forth by people who want to detract from what we are attempting

BEST COPY AVAILABLE

to do may well be myths when you actually have their experience to determine the impact of a regional primary.

We think that what we're doing will make a significant contribution simply because it's going to allow you, sometime prior to 1992, to make an objective assessment of how it is working.

Mr. SWIFT. There's a lot of merit to that.

Mr. Cleland.

Mr. CLELAND. Mr. Chairman, I think what we have in the concept of the regional Presidential preference primary is an evolution of the primary process, where the public got read into the process of nominating Presidential candidates early on in this century. I think this is a step forward. I don't think it's a step backward in the process. I think it's a natural evolution, given the fact the pendulum swar too far and virtually every State decided to get in on the act, which is fine. I think that's every State's prerogative. Now let's make some sense of it.

We in the South saw that we had the ability and the power to make some sense of it, and I think we're moving that forward.

I think the appeal of the regional Presidential preference primary, whether from the South's point of view or New England's point of view, the Midwest or the Western States, wherever you happen to be from, is both parochial and idealistic, parochial in the sense that you get your own State's oar in the water and you have the authority and the responsibility to do that.

Second, it is a step forward in the entire nominating process. I consider tightening up the campaign, shortening the window, and having 5 or 6 or maybe at the most, 10 key votes instead of 20 or 30 a good step forward. I am for somebody winning and somebody losing. I am not for carrying the campaign throughout the entire year all the way into the convention. I think we on the Democratic side have suffered from that in 1980 and 1984, whereas I think both parties would be best served by somebody winning and winning soon, patching up the differences, and coming into the convention with their best foot forward.

That is the way I see a healthy Presidential selection process work. I think this is a step toward that.

Mr. SWIFT. Mr. Thomas.

Mr. THOMAS. I thank the gentleman.

I think whether folks want it or not, we are going to have a southern regional primary. The problem is in defining the South by region. Some folks may not initially assume Oklahoma——

Mr. CLELAND. We'll take volunteers.

Mr. THOMAS [continuing]. Is in the region. And that's my point exactly. It's nice to try to sit down and take a map of the United States and determine who's going to be where. But I think sometimes folks here aren't patient enough. If the Southern regional primary is even a minimal success, we ought to let those folks who want to define themselves as being part of that process to be part of the process. And maybe then we'll have a Midwestern region, and who wants to be in that area can define themselves. And maybe we can have a West. Instead of people in Washington drawing a line between Montana and South Dakota and North Dakota and saying, you're in one region and you're in another, why don't we let the States decide where they might want to go and under

BEST COPY AVAILABLE

what structure? And then perhaps we'll see if there are any States left over, and we might be able to restructure. But if it gets too formal, then one State can't move from one region to another, Oklahoma deciding maybe it's perhaps more Midwestern or Southwestern, if that develops.

I really think we have got to keep the fluidity to allow the States to move where they might. The idea of having a window and the idea of folks deciding that they want to be a region is one that ought to be left up to those individuals. I think that is one of the keys that you have said here.

Senator, I wanted to ask you in terms of Kentucky. I know my information shows that Kentucky in 1980 held a primary on May 27. But my information doesn't show that Kentucky held a primary in 1984. Did they?

Mr. PRATHER. That's a good question. We in Kentucky have all of our local offices and our constitutional offices at the State level selected on the fourth Tuesday in May. We had a Presidential primary in 1980 that coincided with that date. Subsequently, the general assembly moved the primary in Kentucky from May to August, which obviously made it impractical to have a Presidential primary on the same day as the other primary. So, the Presidential primary idea was abandoned.

The next general assembly then, after that was set in place, moved the date back to May, but it did not include a provision for a Presidential primary. So, in 1984 we had a very elaborate caucus system that selected the delegates to the national convention. So, now with our joining with the other Southern States through legislation that I sponsored, we have returned to where we should have been all along, which is to a primary, and, even better, to a regional primary

In the last two elections, we have had one of each. I assure you, in my opinion, a primary is preferable.

Mr. THOMAS. That was what I was going to ask you in terms of the kinds of choices. But isn't that one of the things about the Federal system, that States can experiment, and that we have to allow room for those legislatures and the people of the State to decide what they wanted, as was indicated in Mr. Cleland's testimony? The primaries themselves are a 20th century phenomenon, I believe really initiated by the progressive Republicans, which brought in the initiative to recall the referendum. But after that initial splurge in the early twentieth century, it wasn't until the 1960's and in fact, in my opinion, in the 1970's when the Democratic Party in its restructuring of its rules, almost required some kind of a selection process for the quota arrangement so that there has been a transfer between the primaries and the party rules.

My concern is, if we plop Congress down in the middle of that process, it somehow gets rigid very quickly, and we don't allow the continual evolutionary shaping of this process. Perhaps maybe then I guess I am coming to the position that it's OK to set up a window. Mr. Cleland, your concern is that the window is late enough that the process be finished with a breathing time moving into the national party conventions.

What about the beginning of that process? I think we are all in agreement that, even though the primary may start on a specific

BEST COPY AVAILABLE

date, the process is not going to be shortened in terms of who gets in the field and who begins to organize.

I would like to talk with you and you share with me your belief that, if you go to this larger Southern-defined region in 1988, is it in fact going to be easier or more difficult? If there was a primary in California and New Jersey and Ohio on the same day, there's only three. Granted, they are quite a distance apart, but they're not all that much farther apart than Oklahoma, Florida, Kentucky, and Virginia. Would you think that a candidate, to feel that they were going to be handled by the media in the most viable way, would have to field a full-blown organization and spend money in every one of those States? Or do you think, for example, because of population or unique circumstances a particular State like Florida would be more singled out or a Georgia or a Kentucky for particular purposes?

What is your thinking now in terms of a candidate's approach to solving the problem of winning a southern regional primary? Do you win by the region? Do you win by the ss? What have you folks been talking about, about how candidates are going to have to approach your area?

Mr. CLELAND. You still have to consider the States. But you are also free as a candidate to address the issues that relate to the region. You are also able to buy television time that has a regional impact.

There are six major media markets, six major TV markets in Georgia. They touch portions of five different Southern States.

I think what you have here is a simplification of the process, where the elections process itself takes place in a shorter window. Obviously, candidates are going to start running for public office whenever they want to. But the elections process itself, which involves voting and involving the voters themselves, that process is shorter. It is intensified. It means something.

I just think that that is in the interest of the country. It's in the interest of the region. It's in the interest of the candidates themselves, which are able to target and focus their attention, and in the interest of the voter that is able to have some kind of focus in this whole business of who is running for what and where.

Mr. THOMAS. Let me try to ask a more mechanical question. As you indicated, you were all over the country in 1980. You are from Georgia. I assume you had some involvement in President Carter's campaigning activities.

Kentucky has moved from May 27 to that second week in March. The other States have done the same. I assume you picked the earlier date so that you would have some impact on the rest of the country at the time that the decision was made. All the other factors in terms of convenience and the rest of them, it could have been on any other date as well. So, you opted for the earlier date in the region, I assume, for maximum impact. Once you get that date, if other regions are formed, you tend to protect it because you're already there.

How would you advise a candidate? Obviously, if you have sufficient resources, you are going to organize every State. But I don't think that has been the case in the past in that area. You tend to pick on States. What do you think the media is likely to do in

BEST COPY AVAILABLE

terms of how they might cast it? Or is it that the candidates are simply going to decide that, if they win in Florida and they don't win in Alabama or Georgia, they can argue the number of delegates? If they win in Alabama, Georgia, Tennessee, and Kentucky, they can argue they have more breadth in the area and that Florida is different. To what extent are you going to have candidates attempting to fractionalize the regional primary itself in an attempt to put a more favorable light on how they did? Obviously if a candidate sweeps all the States, it's a moot point. That probably isn't going to occur.

Have you talked about how the States themselves would react to each other on the basis of the strategies of candidates?

Mr. CLELAND. I think the States, based on the secretaries of State that I have talked to, Alabama, Florida, Tennessee, South Carolina, and Louisiana, all see the regional Presidential preference primary, No. 1, meeting their needs, as the State of Kentucky came to that conclusion as well.

Second, they sense a need of some reform in the present system. I don't think you would have this adherence to this concept unless, No. 1, it was in the interest of the sss involved and, No. 2, a desire to change from what they were doing.

So, I think that, too, with size, timing becomes less critical. I am happy with the idea that my State and some six other Southern States are now targeted for the week of March 8. I am comfortable with that. I really have no concern, not really, about what any other State does or when they do it. I realize that now my State is going to have its shot and that my region is going to make its voice heard. That satisfied me. It doesn't matter to me if New Hampshire has its primary earlier or that Iowa has a caucus earlier. That doesn't really concern me.

I think what did concern me was that Iowa and New Hampshire were beginning to look like the entire country and that, by the time you got to my section of the country, the battle was either over or you couldn't have a sense of being important.

The accidental Super Tuesday in 1984 taught us all that the media would response to the idea of several States getting together. That has then brought us this far, where by some forethought we feel that we can have not only our oar in the water in the Presidential process but make a contribution to the overall selection process itself.

Mr. THOMAS. It was a short discussion about which date. You wouldn't move to Kentucky's former May 27? The March 8 was an attractive one.

Mr. CLELAND. Well, see, we in Georgia, since we have had our Presidential preference primary, we've had it in March. So, that has been normal for us since 1976.

Mr. THOMAS. So it was easy to convince the other States in the region that that——

Mr. CLELAND. The argument must have been persuasive.

Mr. THOMAS. Thank you very much. I appreciate that.

Mr. SWIFT. I have a couple more brief questions.

You are trying specifically to get some influence for your region and your States in the process. Sander Levin's approach, which he calls an interregional primary, will pick States from a variety of

BEST COPY AVAILABLE

regions. They would all go on 1 day and then 1 week later, 2 weeks later, you would have a different mixture. But his whole idea is, they would come from different regions specifically to gain what he called representativeness.

I see where he is headed. He is basically saying all that regionalism is not as healthy as it would be to try and have a process by which all regions were represented each time you had a primary.

Do you have any reaction to that proposal of his?

Mr. CLELAND. I think that's what you have now, Mr. Chairman.

Mr. SWIFT. Except less organized.

Mr. CLELAND. Yes. You have that. What I would call chaotic he would call representative. What I would call representative he would call regional.

I think from a candidate's point of view, from a campaign point of view, at least with the regional concept, you are able to come in and campaign and spend money in a targeted way. I know as a practical matter just within my own State when I try to schedule something, say, outside of Atlanta, I try to combine two, three, four, five events maybe in a 2- or 3-day swing so that I don't have to burn up money, resources, and so forth, hopping back and forth. That's what drives me crazy in my own normal political life in my own State.

Having been with a Presidential campaign and tried to keep up with this patchwork system that has evolved, I can speak, I think, from certainly a practical politics point of view and a campaign point of view and a media expenditure point of view and a time resource point of view. I would much rather have a benchmark that I could move into an area and cover several States toward a deadline than just to be constantly hopping back and forth and literally not know where you are.

Anyone who has ever campaigned in a Presidential primary environment understands that statement. I never thought that I would ever say that, but by the time I had been on the road several weeks, I really had to read a card and find out what State I was in and where I was. There are some interesting film clips, I think, from 1972 that shows, I think, Senator Muskie not quite knowing what State he was in when he got off the plane.

This is not the way we ought to have a system where we elect a President of the United States.

Mr. PRATHER. My first-blush reaction would be that, in an attempt to be extremely fair, that you're being impractical. I believe that you just can't codify everything. It seems to me that you are then signing off on something that resembles the system we have now, which we are trying to get away from. We don't think it has worked.

I do agree that it's probably premature to try to designate areas and to place States here and there at this time. I saw one proposal that had Kentucky in with Illinois, Indiana, and Kansas. Well, I shudder at that. I have nothing against my friends from those States. But it's just that, when we start thinking about issues that affect us, we go South more than we go any other direction. I would hate to see that written into law.

BEST COPY AVAILABLE

I think that probably we do need more history behind us before any definite action is taken, other than to address the window that we mentioned earlier.

Mr. SWIFT. When Kentucky moved its primary date around, now you're talking about the southern primary on March 8. Is that when Kentucky is going to have its State primary?

Mr. PRATHER. No. We will join the other States for the Presidential primary only. Our other primary will still be in the fourth Tuesday in May. There is a very practical reason, if no other, for that. That is that on the second Tuesday in March of the Presidential election year our general assembly is in session. It wouldn't be very practical for us to be running at that time.

Mr. SWIFT. Of the other States in the southern primary, how many of them are going to be able to have their State primaries on March 8 and how many of them will in fact have their State primaries at some other time?

Mr. CLELAND. I am not sure, Mr. Chairman. We in Georgia will not in 1988 have our State officers up. However, we will have the legislature up. Our primary is in August.

Mr. SWIFT. August.

Mr. CLELAND. Yes.

Mr. SWIFT. We can find out the answer. What I am kind of driving at is a question we discussed here this morning, as to whether there's inefficiency in a State having to run a Presidential primary at some time other than they are running their own. The answer seems to be, if they think the Presidential primary is important enough, they can find a way to do it on separate dates.

Is that a fair statement?

Mr. CLELAND. Yes, sir.

Mr. PRATHER. I believe that is a fair statement. Frankly, I think that that places even added emphasis on just the Presidential primary in those States where that is the only issue on the ballot at that time. I think it's desirable.

Mr. SWIFT. A final question that I have is this. If we just let natural things evolve here, maybe we tighten the window a little bit; but at the Federal level we don't set up one of these more elaborate regional primaries at this time. There is a very good chance that what could happen is a tremendous front-loading of other regions and other States, all trying to get in very early on and creating a different kind of chaos, not the same as we have had but a different kind of situation, in which candidates are still having to run all over the country back and forth.

The Federal Government at that point might have to step in and try and bring some order out of that. Then you get into the problem of deciding what region or what group of States go first, what ones go second, what ones go third. That gets very dicey, as you might expect.

Do you think—this is down the line—but should the Federal Government at some point have to do something like that, should there be a rotational basis so that, say, we did them on a regional basis, the South some years would go first and some years it would go third, and some years it would go——

Mr. CLELAND. Mr. Chairman, let me respond to that. I think the problem begins to take care of itself because, with a regional pri-

BEST COPY AVAILABLE

mary, you have a strong sense that your parochial needs are met and that the needs of your region are met. The timing, it seems to me, becomes less critical It is when you are on your own, when every one of the 50 States is out there, every man or woman for himself, every State for themselves, then you start playing the game of one-upmanship. And you say, well, all the action is going to Iowa and to New Hampshire. Well, you say, well, why don't we just get ahead of them? Then New Hampshire changes its law. Then Florida comes along and says, well, we won't have a real thing, we'll have something called a straw poll. That's going to be in November of the year before.

See, every State begins to play, with no rules at all, with no voluntary cooperation. Then every State plays this game of one-upmanship, which I think has led us to this disastrous point at which 39 States are involved with 50 different sets of rules in a chaotic mess.

What you have with a regional Presidential preference primary is parochial interests taken care of and the system by that very nature of that process evolving into a more sane process for the Nation. And you don't worry, it seems to me, about whether you are up top or in the bottom; you are solid and you know that you will have your chance and your say.

Mr. SWIFT. I understand the wisdom to what you are saying. I do have the impression that, if we were to be about to pass legislation that said that the Southern States would always go last, there would be some concern in the South about that; and I wouldn't blame them. I don't think we are talking about doing anything like that now. But trying to look down the road a piece as to where this may be leading, we need to figure out some means by which no region of the country is always the one that has got to bring up the rear or always has the advantage of being that first one to be able to anoint various candidates. And how that is done in a fair way and a sensible way may be a little difficult for us to figure out.

Senator.

Mr. PRATHER. As I mentioned in my opening remarks, I think we are going to enjoy our opportunity to be early and to be the first regional primary. But at the same time, as I acknowledged, I think the time may come. When you have a sufficient number of the States involved in a regional primary of their choosing. Another point, I see nothing wrong with altering the rotation so that we take our rightful turn. But at the same time, I think it will be some time down the road before that will have to be addressed. But at that time, I think it would be reasonable to address it in that way.

Mr. SWIFT. I thank you. You are right. We are borrowing trouble a little bit at this point. But I kind of wanted to have some sense of your idea where we might go out in the future.

Mr. Thomas.

Mr. THOMAS. Thank you, both of you.

In terms of your States, can the parties, are they required to participate in the primary, or may they choose to participate, depending?

BEST COPY AVAILABLE

Mr. PRATHER. In Kentucky they are required to participate. The delegates then are apportioned based on the results. That is for the first ballot. They are bound on the first ballot.

Mr. THOMAS. And in Georgia?

Mr. CLELAND. The parties are required to participate, the Democratic Party, the Republican Party. There are opportunities for other parties to be on the ballot as well.

Mr. THOMAS. Each State has structured the way in which it—we have a first ballot bindingness in Kentucky. Other States, I am sure, are structured differently. Has there been any discussion among the States in the region who have already committed to the second Tuesday in March that it might be useful to produce some uniformity between States for scorekeeping purposes? That is, if you select delegates differently, some are bound on the first ballot, some are not, that when you examine the impact that the region has had on the Presidential contest, some States will have more influence than others because their rules are slightly different? Has this been discussed at all in terms of a degree of regional uniformity?

Mr. CLELAND. I think that might be one of the benefits to evolve slowly out of this process, if just agreeing on the date seems to have a beneficial effect.

Mr. THOMAS. So far you're telling me that it's the date that has been agreed upon, that everything else is OK?

Mr. PRATHER. We do have——

Mr. THOMAS. Have you had discussions along that line at all yet, just informally? Or are you not really——

Mr. CLELAND. Primarily the date, Mr. Thomas, has been the main focus.

Mr. THOMAS. Because I can see someone talking about, well, now, Kentucky's vote was more important than, say, Alabama's because the Kentucky delegates are bound on the first vote; and that means more than the other one. They will get into those kinds of comparisons on an intraregional basis. So, I look forward to the kinds of discussions you have beyond the date.

I am very interested in this experiment, obviously.

Mr. SWIFT. Senator, did you have anything you wanted to——

Mr. PRATHER. I think it has been addressed. Thank you, Mr. Chairman.

Mr. SWIFT. We want to thank you very much. This discussion has been extremely helpful.

I hope you will extend to your colleagues throughout the region this committee's interest in what you are doing. We are going to be watching it with care. Certainly if any of your colleagues—there were a couple who were invited and could not make it today because of legislative sessions, and so forth—if they have any input they would like to provide to the committee, we would most welcome it. If you would extend that to your colleagues, I would appreciate it.

Mr. SWIFT. Thank you very much.

We will have another hearing on this, the date to be announced. The subcommittee stands adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

BEST COPY AVAILABLE

PRESIDENTIAL NOMINATING PROCESS

THURSDAY, MAY 8, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room 340, Cannon House Office Building, Hon. Al Swift (chairman of the subcommittee) presiding.

Present: Representatives Swift, Panetta, Thomas, and Frenzel.

Staff present: Kathryn Erickson Jarvis, staff director; Karl J. Sandstrom, elections counsel; and Kathee McCright, minority senior legislative analyst/elections.

Mr. SWIFT. The subcommittee will come to order.

Good morning. Our hearing today is the second subcommittee hearing on the Presidential nominating process.

The bills we are considering include two regional primary bills, H.R. 251 and H.R. 3542, introduced by Representatives Bennett and Nelson, respectively. There is also on interregional primary bill, H.R. 4353, introduced by Representative Levin of Michigan, and finally, we have H.R. 1380, the bill establishing a 3-month window for the scheduling of primaries and caucuses, introduced by Representatives Udall and Frenzel.

Our focus is the current Presidential nominating process and whether it serves its ostensible purpose of selecting for each party the best candidate—the individual the membership of that party would most like to see become President of the United States.

I have a written statement that, without objection, I would like to submit for the record.

OPENING STATEMENT OF THE HONORABLE AL SWIFT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Good morning. Our hearing today is the second Subcommittee hearing on the presidential nominating process.

The bills we are considering include two regional primary bills, H.R. 251 and H.R. 3542, introduced by Representatives Bennett and Nelson, respectively. There is also one inter-regional primary bill, H.R. 4353, introduced by Representative Levin of Michigan. And finally we have H.R. 1380, the bill establishing a three-month window for the scheduling of primaries and caucuses, introduced by Representatives Udall and Frenzel.

Our focus is the current presidential nominating process, and whether it serves its ostensible purpose of selecting for each party the best candidate—the individual the membership of that party would most like to see become president of the United States.

Personally, I think we have strayed from that goal. Parochial rather than national concerns control our nominating process. Candidates, states and regions each vie for their own advantage. As Theodore H. White observed after the last election in

BEST COPY AVAILABLE

1984: "The primary system today bounces crazily from state to state, hobbled by bizarre party regulations, dominated by the dramatic needs of television. . . . By 1988 it is certain that both parties will be holding primaries simultaneously in a free-for-all that will confuse everyone. New public laws, not new party regulations, are needed."

As I mentioned at our last hearing, one proposal I believe merits serious consideration is H.R. 1380, which establishes a three-month window for caucuses and primaries. It would correct the aspect I find most troubling in the current nominating process—the disproportionate influence of the early contests. I am particularly concerned that the handful of early states prematurely eliminate worthy presidential contenders. Individuals who have spent months of time and millions of dollars and may have widespread support outside the early states are removed from contention after only a few thousand votes have been cast.

The influence of these early states stems not from their delegate count but from the extensive media coverage they receive. Several years ago Michael Robinson, whom we are pleased to have as one of our distinguished witnesses today, calculate that each Democratic vote in New Hampshire received 170 times as much network news time as each Democratic vote in New York. As he very rightly pointed out: "the network attention given to New Hampshire was vastly out of proportion to its literal significance."

Not surprisingly, as other states see the media attention the early states attract and the influence they wield, they seek to share the limelight. As a result, the election season begins ever earlier.

As we all know, the southern states have been moving their primary and caucus dates to early March. Western and Rocky Mountain states, among others, have also engaged in serious discussions about moving their dates forward. Michigan is beginning the first stages of its presidential delegate selection process already this year, before the off-year elections have even been held.

And, just since we last met six weeks ago, South Dakota moved its primary to late February—the same day as the New Hampshire primary.

Despite the claims of hallowed tradition that surround the positions of the early states in the nominating process, much of what we presently have had actually developed in just the past few election cycles.

As Hugh Winebrenner pointed out in "The Annals of Iowa": "Iowa's emergence as a weather vane in presidential politics is a recent development. Prior to 1972, the Iowa caucuses were just another electoral event in the middle of the national caucus and primary schedule. When the Iowa Democratic party decided to schedule their caucuses in January rather than March or April, they began a chain of events which resulted in the caucuses becoming a natinal phenomenon."

Similarly, prior to 1972 the New Hampshire primary was on the second Tuesday in March—the very date to which H.R. 1380 seeks to return it. But in 1972 Florida moved its primary to the second Tuesday in March, so New Hampshire moved its primary to the first Tuesday in March. In the next presidential election, 1976, Massachusetts and Vermont scheduled their primaries for the first Tuesday in March, so New Hampshire promptly moved its primary to the fourth Tuesday in February.

This year, as I mentioned earlier, South Dakota has scheduled its primary for the fourth Tuesday in February. New Hampshire will now move its primary to the third Tuesday in February, once again arrogating to itself the right to be first. Only federal legislation will be able to restore some balance among the states.

Our purpose here today is to consider these issues; what kinds of problems we have in our presidential nominating process, how serious they are, and what should be done about them. We are pleased to welcome a series of distinguished witnesses to assist us in our deliberations.

Also, if there is no objeciton, there are two items I would like to include in the hearing record. They are: (1) a paper submitted by Steven J. Brams, a political science professor at New York University, on "Optimal Resource Allocation in Presidential Primaries"; and (2) a CRS paper on "Presidential Preference Primaries in 1988: Projected Scheduling and Recent Developments." In addition, I would propose to hold the record open until one month from today for the receipt of additional materials that we may wish to include.

With that, let me welcome everyone here today, and we may begin.

BEST COPY AVAILABLE

maries", and second, a CRS paper on projected scheduling of Presidential primaries in 1988.

Mr. SWIFT. Also, if there is no objection, there are two other items I would like to include in the hearing record. They are, first, a paper submitted by a political science professor at New York University on "Optimal Resource Allocation in Presidential Pri-

BEST COPY AVAILABLE

Mathematical Social Sciences 3 (1982) 373–388
North-Holland Publishing Company

OPTIMAL RESOURCE ALLOCATION IN PRESIDENTIAL PRIMARIES*

Steven J. BRAMS
Department of Politics, New York University, New York, NY 10003, U.S.A.

Morton D. DAVIS
Department of Mathematics, City College of New York, New York, NY 10031, U.S.A.

Communicated by K.H. Kim
Received 18 June 1981
Revised 17 May 1982

A model for the optimal allocation of resources in presidential primaries is described, under the assumption that two candidates seek to maximize their expected delegate vote in a sequential game that allows for momentum transfer from earlier to later contests. Specifically, the model assumes that the probability that a voter in a primary state votes for a particular candidate is a function of both the resources that candidate and his opponent allocate to that primary and their performances in the immediately preceding primary – and indirectly on all earlier primaries. Given that the candidates make equal (optimal) allocations to each primary, a local maximum, which heavily emphasizes the earlier primaries, is found. Several modifications in the basic model are discussed. Preliminary financial expenditure data are used to test the basic model for the 1976 primaries, and some cursory comparisons with 1980 are made. Possible normative implications of changes in the primary rules are briefly considered, particularly with respect to inequities the present rules seem to engender.

Key words: Campaign resource allocation; primary campaign.

0. Introduction

In this paper we shall present a model for the optimal allocation of resources in presidential primaries that assumes 'momentum' is transferred from earlier to later primaries.[1] After justifying the need for such a model, we shall describe the basic model and its solution, suggest possible modifications in this model, indicate how resource allocations by candidates can be operationalized, and then offer some preliminary evidence to test the empirical validity of the model. We shall also suggest briefly what normative implications the model and its testing might have for

*We are grateful to Seth Benjamin for valuable research assistance.

[1] Quantitative estimates of the momentum generated by presidential primary victories are given in Beniger (1976, 1979) and by Richard B. Wirthlin in Moore and Fraser (1977, p. 36).

0165-4896/82/0000–0000/$02.75 © 1982 North-Holland

BEST COPY AVAILABLE

possible reform of the presidential selection process to eliminate effects considered deleterious by some.

1. State primaries in the presidential selection process

State primaries today are all but decisive in the nomination of candidates by the two major parties. In the winter and spring of 1980, about 80 percent of the delegates to each of the major-party conventions were elected in 38 state primaries. Since 1960, when the era of modern campaigning began and there were only 16 state primaries, no nominee of either major party has won his party's nomination without winning in the primaries, with the exception of Hubert Humphrey in 1968. But Humphrey was an incumbent vice president, his most significant opponent (Robert Kennedy) was assassinated, and there were less than half as many primaries in 1968 as now. It is almost inconceivable that a presidential candidate today – even an incumbent president – could be nominated by his party without running and winning in the primaries, as the cases of Gerald Ford in 1976 and Jimmy Carter in 1980 demonstrated.

We do not want to diminish the role of nonprimary states, which still elect a substantial number of delegates to both national party conventions. Moreover, states like Iowa, whose caucuses are the first in the nation, may have a significant impact, independent of the number of delegates they elect.

The model we shall describe, it should be stressed, is not specifically addressed to primary, as opposed to caucus, states, though for purposes of exposition we shall usually speak of primaries, since they bulk so large, quantitatively, today. But whatever the rules for the selection of delegates in each state, a case can certainly be made that the nomination phase of the presidential election process is now more consequential than the general-election phase.

This is so, Keech and Matthews (1976, p. 1) argue, because there are usually substantially more serious contenders, and therefore better options, in the fight for each party's nomination than in the general election, wherein there are historically only two viable contenders – and sometimes only one – though John Anderson's independent candidacy in 1980 may change this pattern. Since the choice a voter makes in his state primary is typically from a larger field, it is therefore more consequential to each candidate, particularly if the state is small and the race in that state is considered crucial to a candidate's chances. Although it may be happenstance that no candidate who has lost in the New Hampshire primary has ever won the presidency, the basic model we shall describe shows up, quantitatively, the great – and possibly undue – influence of New Hampshire's first-in-the-nation primary status.

At the risk of oversimplification, we suggest that a candidate's performance in presidential primaries depends on two main factors – his positions on issues and his resources. In the case of the first factor, one of us has explored informally (Brams,

BEST COPY AVAILABLE

1978a), and more formally with Straffin (Brams and Straffin, 1982), strategic aspects of candidates' positioning themselves on issues in multicandidate elections, in which winnowing of the less serious candidates occurs over an extended series of elections.

In the case of the second factor, with the notable exception of recent work by Aldrich (1979, 1980a–c), who has developed game-theoretic and difference-equation models of the nomination process, we know of no models of resource commitment or allocation in presidential primaries. Although the optimization model we shall propose differs structurally from Aldrich's models, we believe the models complement each other, and results derived from each are entirely consistent.

2. The basic model

In a previous model of resource allocation in the general election for the presidency, we (Brams and Davis, 1973, 1974) assumed that the probability that a voter in state i votes for the Democratic Party candidate is

$$p_i = d_i/(d_i + r_i),$$

where d_i and r_i are, respectively, the resources that the Democratic and Republican candidates allocate to state i.[2] In the present model, we provisionally assume that there are just two candidates, A and B, in one party's primary (or caucus) race, and the probability that a voter in primary 1 votes for candidate A is

$$p_1 = a_1/(a_1 + b_1),$$

where a_1 and b_1 are, respectively, the resources that candidates A and B allocate to primary 1. Thus, in primary 1, the assumption of the general-election model relating resource allocation to the probability of voting for a particular candidate is retained. Also, it is assumed that voting for each of the two candidates by *concerned* (nonindifferent) voters are mutually exclusive and exhaustive events: they vote either for A or B; there are no other candidates, and concerned voters do not abstain.

Assume a strict sequence of primaries, or set of primaries. Let the primaries, or set of primaries, be indexed by i, $i = 1, 2, \ldots, n$, where $i = 1$ refers to all primaries on the first primary date, $i = 2$ refers to all primaries on the date the next one or more primaries are held, and so on for the n distinct primary dates. For convenience, we shall henceforth refer to primary 1, primary 2, and so on, with the understanding that primary i refers to all primaries held on the ith primary date in the sequence of state primaries.

The next step is to specify the *general relationship* between the probability,

[2] For a generalization, see Shane (1977). See also Brams (1978b) for a discussion of related models.

BEST COPY AVAILABLE

p_i, $i = 2, 3, \ldots, n$, that a voter in primary $i > 1$ votes for candidate A and the resources candidate A allocates to primary i. Unlike primary 1, however, we assume that the probability that a voter in any primary *after the first* votes for candidate A does not depend only on the resources A, versus B, allocates to that primary. Instead, we assume that p_i, where $i > 1$, depends also on p_{i-1}, the probability that a voter in primary $i-1$ voted for A. That is, we assume a kind of momentum – either positive or negative – is transferred from each primary to affect performance in the primary immediately following it.

Specifically, we postulate

$$p_i = \frac{p_{i-1}a_i}{p_{i-1}a_i + (1-p_{i-1})b_i} \quad \text{for } 2 \le i \le n.$$

In this manner, the resources A allocates to primary i, a_i, are discounted by p_{i-1}, the probability that a voter in the preceding primary voted for A; similarly, the resources B allocates, b_i, are discounted by the probability, $(1-p_{i-1})$, that a voter voted for B in primary $i-1$. Necessarily,

$$p_i + (1-p_i) = 1,$$

that is, a concerned voter in primary i votes for either candidate A or B.

To summarize, in the basic model we assume that a candidate's (say, A's) performance – as gauged by p_i, the probability that a voter in primary i votes for him – depends in primary 1 only on the resources he, versus his opponent (B), allocates to that primary; but *in all subsequent primaries*, A's performance depends on both the resources he allocates and his performance in the immediately preceding primary. The greater A's p_{i-1} in that preceding primary, the less is B's complementary $(1-p_{i-1})$, so the more A's resource allocation in primary i, a_i, 'counts' as compared to B's. This sequential-dependence assumption means that A's p_i in any primary is boosted the greater his p_{i-1} was in the preceding primary. In fact, if the latter probability exceeds 1/2, it is appropriate to say A's momentum going into primary i is positive; otherwise, B's is, unless $p_{i-1} = 1/2$.

This interdependence, however, holds not just between adjacent primaries. Because p_{i-1}, which affects p_i, depends on p_{i-2}, there is an indirect transfer of momentum from primary $i-2$ to i. This indirect transfer of momentum extends backward to primary 1, thus rendering p_i dependent on A's performance in *all* previous primaries. So although the model formally incorporates a *direct* dependence only between adjacent primaries in the sequence, there is an *indirect* dependence that makes performance in primary i a function of performance in all preceding primaries.

There are a couple of obvious implications of this basic model. For candidate A, if any $a_i = 0$, $i = 1, 2, \ldots, n$, this will render $p_i = 0$, given $b_i > 0$. This implies $(1-p_i) = 1$, which means B wins the votes of all concerned voters in primary i. But then this implies that in subsequent primary $i+1$, $p_{i+1} = 0$, because the discounting factor p_i on the right-hand side of

BEST COPY AVAILABLE

$$p_{i+1} = \frac{p_i a_{i+1}}{p_i a_{i+1} + (1 - p_i) b_{i+1}}$$

is 0. Hence, A's failure to allocate some resources to any primary i means that he not only wins no votes in that primary but also in the subsequent primary – and all primaries subsequent to that, too. Thus, the chain is broken if any primary is ignored.

This implication seems to fly in the face of some conventional wisdom, which says that a presidential candidate can on occasion afford to write off some primaries if he does sufficiently well in others that he chooses to contest.[3] We shall deal with this and other issues later when we describe possible modifications in the basic model in Section 4. For now, the salient question is whether the basic model has a solution, and if so what it is.

3. A solution to the basic model

We shall proceed by showing that, when viewed as a constrained maximization problem, the basic model has a closed-form (analytic) equilibrium solution in that, if either player unilaterally deviates a small amount, he decreases his payoff. Our argument will depend on an induction hypothesis that postulates the solution for all primaries i, $i = 1, 2, \ldots, n$, from which we shall derive the solution for a $(n+1)$st (prior) 0th primary. By demonstrating that the locally optimal allocation for the 0th primary takes the same form as that for all other primaries i, given a symmetry assumption, we shall prove that the hypothesized set of allocations for all primaries is indeed locally optimal.

The constraint assumptions will be specified in detail below, but we point out here that the presidential campaign-finance law, which took effect for the first time in the 1976 campaign, limits all presidential contenders not only to a certain total amount of spending in all state primaries/caususes but also to certain amounts in *each* primary/caucus – if they accept matching funds from the government. In fact, all candidates in 1976 and 1980 subscribed to these limits, with the exception of John Connally in the 1980 Republican race, whose case we shall discuss in Section 4.

Since the sum of the state spending limits far exceeds the overall limit, the latter is the only serious constraint (except possibly in New Hampshire, which we shall say something about later). Accordingly, we do not incorporate state spending limits as formal constraints in our model, though we shall assume that the locally optimal allocations to each state are, by symmetry, the same for leading contenders A and B who can spend up to the overall limit.

[3] See Aldrich (1979) for a sophisticated analysis of this question.

BEST COPY AVAILABLE

Assume candidate A seeks to maximize his expected delegate vote, across all n primaries,

$$V = \sum_{k=1}^{n} v_k p_k,$$

where v_k = the number of delegates of a party in primary k and

$$p_1 = \frac{a_1}{a_1 + b_1},$$

$$p_k = \frac{p_{k-1} a_k}{p_{k-1} a_k + (1 - p_{k-1}) b_k} \quad \text{for } 2 \le k \le n. \tag{1}$$

(Note that if we assume $p_0 = 1/2$, (1) defines p_k *for* $k = 1$.)

Assume variables a_k and b_k are the resources that candidates A and B, respectively, allocate to each primary k, subject to the constraints

$$a_k \ge 0, \quad b_k \ge 0, \quad p_k \ge 0 \qquad \text{for } k = 1, 2, \ldots, n,$$

$$\sum_{k=1}^{n} a_k = A \quad \text{and} \quad \sum_{k=1}^{n} b_k = B.$$

(Note that we use 'A' and 'B' both to name the two candidates and to indicate their total resources.)

To find the optimal allocation, a_i^*, candidate A should make to primary i to maximize the objective function, V, make the following induction hypothesis:

$$a_i^* = b_i^* = A \sum_{k=i}^{n} v_k \Big/ \sum_{k=1}^{n} k v_k \quad \text{for } 1 \le i \le n.$$

Now consider $n+1$ primaries, which include the 0th primary and n subsequent primaries. Our object is to find two *symmetric* strategies for A and B which are in local equilibrium.

Assume that A and B make allocations, a and b, respectively, to the 0th primary, and that $a = b$ and allocations to all other primaries are the same, so $A = B$. Assume also that A and B make their allocations to the remaining primaries in accordance with the induction hypothesis.

Now assume that A unilaterally perturbs his allocation to the 0th primary, either increasing or decreasing it. If $a_0 = a = b_0 = b$ are the allocations to the 0th primary, we shall show that such a perturbation from the a_0 calculated to be the optimal allocation in the 0th primary – according to the induction hypothesis – leads to a lowering of the expected delegate vote for A (assuming B's allocations to the remaining n primaries remain unchanged, and A's perturbed allocations remain in proportion to his initial allocations).

Since $a = b$,

$$p_0 = \frac{a}{a + b} = 1/2, \tag{2}$$

BEST COPY AVAILABLE

but the distinction between a and b is maintained because when a is perturbed, b remains constant. The effect, we shall show, is to decrease the expected delegate vote for A.

By the induction hypothesis,

$$a_i = b_i = (A-a)\sum_{k=1}^{n} v_k \Big/ \sum_{k=1}^{n} k v_k \quad \text{for } i>0. \tag{3}$$

Let

$$F = \frac{a}{a+b} v_0 + \sum_{k=1}^{n} p_k v_k.$$

Then

$$\frac{dF}{da} = \frac{b}{(a+b)^2} v_0 + \sum_{k=1}^{n} \frac{dp_k}{da} v_k. \tag{4}$$

From (1),

$$p_i = \frac{p_{i-1} a_i}{p_{i-1}(a_i - b_i) + b_i}$$

and, after simplification,

$$\frac{dp_i}{da} = \frac{da_i}{da}\left[\frac{p_i}{a_i} - \frac{p_i^2}{a_i}\right] + \frac{dp_{i-1}}{da}\left[\frac{p_i}{p_{i-1}} - \frac{(a_i - b_i)p_i^2}{a_i p_{i-1}}\right]. \tag{5}$$

For later reference note that since $d^2a_i/da^2 = 0$ from (3), we have

$$\begin{aligned}\frac{d^2p_i}{da^2} = \frac{da_i}{da}\left\{\frac{dp_i}{da}\left[\frac{1}{a_i} - \frac{2p_i}{a_i}\right]\right\} + \left(\frac{da_i}{da}\right)^2\left[-\frac{p_i}{a_i^2} + \frac{p_i^2}{a_i^2}\right] + \frac{d^2p_{i-1}}{da^2}\left[\frac{p_i}{p_{i-1}} - \frac{(a_i - b_i)p_i^2}{a_i p_{i-1}}\right] \\ + \frac{dp_{i-1}}{da}\left\{\frac{dp_i}{da}\left[\frac{1}{p_{i-1}} - \frac{2(a_i - b_i)}{a_i p_{i-1}}\right] + \frac{dp_{i-1}}{da}\left[\frac{-p_i}{p_{i-1}^2} + \frac{(a_i - b_i)p_i^2}{a_i p_{i-1}^2}\right]\right. \\ \left. + \frac{da_i}{da}\left[\frac{-b_i p_i^2}{a_i^2 p_{i-1}}\right]\right\}.\end{aligned} \tag{6}$$

Now let $a_i = b_i$ for $i = 0$ to n. Then $p_i = 1/2$, and (5) becomes

$$\frac{dp_i}{da} = \frac{da_i}{da}\left(\frac{1}{4a_i}\right) + \frac{dp_{i-1}}{da}. \tag{7}$$

From (3),

$$\frac{da_i}{da}\left(\frac{1}{4a_i}\right) = \frac{-a_i}{A-a}\left(\frac{1}{4a_i}\right) = \frac{-1}{4(A-a)}. \tag{8}$$

Substituting (8) into (7),

$$\frac{dp_i}{da} = \frac{-1}{4(A-a)} + \frac{dp_{i-1}}{da} = \frac{-i}{4(A-a)} + \frac{dp_0}{da} = \frac{-i}{4(A-a)} + \frac{1}{4a} \tag{9}$$

BEST COPY AVAILABLE

since, from (2),

$$\frac{dp_0}{da} = \frac{b}{(a+b)^2} = \frac{1}{4a}$$

at $a = b$. Substituting (9) into (4), at an extreme point,

$$\frac{dF}{da} = 0 = \frac{b}{(a+b)^2} v_0 + \sum_{k=1}^{n} v_k \left[\frac{1}{4a} - \frac{k}{4(A-a)}\right].$$

At $a = b$,

$$\frac{v_0}{4a} = \sum_{k=1}^{n} -v_k \left[\frac{(A-a) - ka}{4a(A-a)}\right],$$

$$(A-a)v_0 = \sum_{k=1}^{n} v_k[-A + (k+1)a],$$

$$(A-a)v_0 + \sum_{k=1}^{n} v_k A = a \sum_{k=1}^{n} (k+1)v_k,$$

$$a \sum_{k=0}^{n} (k+1)v_k = \sum_{k=0}^{n} v_k A.$$

Hence,

$$v_0 = A \sum_{k=0}^{n} v_k \Big/ \sum_{k=0}^{n} (k+1)v_k.$$

In general, as hypothesized,

$$a_i^* = b_i^* = A \sum_{k=i}^{n} v_k \Big/ \sum_{k=1}^{n} k v_k \quad \text{for } 1 \le i \le n$$

or, alternatively,

$$a_i^* = b_i^* = \left(\frac{v_i + v_{i+1} + \cdots + v_{i+m}}{\sum_{k=1}^{n} v_k + \sum_{k=1}^{n-1} v_{k+1} + \cdots + \sum_{k=1}^{n-m} v_{k+m}}\right) A, \tag{10}$$

where $i + m = n$, or $m = n - i$.

To prove $a_i^* = b_i^*$ is a maximum, note that, when $a_i = b_i$, the first two terms of (6) become

$$\frac{da_i}{da}\left\{\frac{dp_i}{da}\left[\frac{1}{a_i} - \frac{2p_i}{a_i}\right]\right\} + \left(\frac{da_i}{da}\right)^2 \left[-\frac{p_i}{a_i^2} + \frac{p_i^2}{a_i^2}\right] = \left(\frac{da_i}{da}\right)^2 \left(\frac{-1}{4a_i}\right)$$

since $p_i = 1/2$. The third term is

$$\frac{d^2 p_{i-1}}{da^2}[1 - 0] = \frac{d^2 p_{i-1}}{da^2}.$$

BEST COPY AVAILABLE

Finally, the fourth term is

$$\frac{dp_{i-1}}{da}\left\{\underbrace{\left[\frac{dp_i}{da}(2)+\frac{dp_{i-1}}{da}(-2)\right]}_{\substack{\frac{-1}{2(A-a)} \\ \text{from (9)}}}+\underbrace{\frac{da_i}{da}\left(\frac{-1}{2a_i}\right)}_{\substack{\frac{1}{2(A-a)} \\ \text{from (8)}}}\right\}=0.$$

Thus,

$$\frac{d^2p_i}{da^2}=\left(\frac{da_i}{da}\right)^2\left(\frac{-1}{4a_i^2}\right)+\frac{d^2p_{i-1}}{da^2}. \tag{11}$$

From (11),

$$\frac{d^2p_{i-1}}{da^2}=\left(\frac{da_{i-1}}{da}\right)^2\left(\frac{-1}{4a_{i-1}^2}\right)+\frac{d^2p_{i-2}}{da^2}. \tag{12}$$

After substituting (12) into (11), and making further substitutions that reduce the subscripts, (11) becomes

$$\frac{d^2p_i}{da^2}=-\sum_{k=1}^{i}\left(\frac{da_k}{da}\right)^2\left(\frac{1}{4a_k^2}\right)+\frac{d^2p_0}{da^2}.$$

Since

$$p_0=\frac{a}{a+b} \quad \text{and} \quad \frac{dp_0}{da}=\frac{b}{(a+b)^2},$$

$$\frac{d^2p_0}{da^2}=\frac{-2b}{(a+b)^3}<0 \quad \text{and} \quad \frac{d^2p_i}{da^2}<0,$$

so the extreme point is a maximum for any nonzero allocation by A to primary 0.

We have shown that the constrained maximization problem does have a closed-form solution, given by (10). Like locally optimal allocations in the general-election models (Brams and Davis, 1973, 1974; Lake, 1979), allocation a_i^* is maximal in the sense that, given the candidates make the same allocations to all primaries, neither candidate will have an incentive to deviate by a small amount from these allocations because he would do worse – and the other candidate better – if he did.

This result is more in the spirit of an equilibrium solution than a game-theoretic solution since the symmetry assumption, $a_i=b_i$, means that each player does not make a truly independent strategy choice. Rather, given that the players perceive the primaries in a similar manner, and accordingly make equal allocations to them, it says what these allocations should be to maximize a player's expected delegate vote. While locally maximal, it is not clear whether these allocations are globally maximal and therefore constitute the minimax solution to the two-person, zero-sum game in

BEST COPY AVAILABLE

which the players are *not* assumed to make the same allocations.[4]

To give some feeling for the solution of (10), assume there are $n=4$ state primaries. Also assume, for simplicity, that all primaries are the same size, i.e., $v_i = 1$ for all i. Then, expressed as proportions,

$$a_1^* = \frac{1+1+1+1}{4+3+2+1} = \frac{4}{10} = 0.40,$$

and

$$a_2^* = 0.30, \qquad a_3^* = 0.20, \qquad a_4^* = 0.10.$$

Hence, a candidate should allocate, according to the model, 40 percent of his resources to primary 1, almost twice as much as its size alone (25 percent of the total number of delegate votes) would warrant; and he should allocate only 10 percent of his resources to primary 4, less than half what its size would warrant. Clearly, the model indicates a strong bias in favor of the first state, which receives four times the allocation of the (equal-size) fourth state.

The optimal allocation formula takes a particularly simple form if there are only two primaries, with the ratio of optimal allocations in primaries 1 and 2 being

$$a_1^*/a_2^* = (v_1 + v_2)/v_2.$$

Thus, a candidate should always spend more in primary 1 than primary 2, no matter how small primary 1 is. For example, in the 1980 race, focusing only on the first state primary (New Hampshire) on February 26, and the two primaries that followed one week later (Massachusetts and Vermont) on March 4, the percentages of convention delegates that were chosen in these two weeks in each party in New Hampshire are 13 (Democratic) and 22 (Republican) percent, but optimal allocations according to the model are 54 (Democratic) and 58 (Republican) percent. Clearly, to generate positive momentum, a candidate should allocate resources to New Hampshire – time, staff, media advertising, and the like – far out of proportion to its size, as common sense would suggest.

The difference, however, between common sense and the optimal allocations is one of precision: the latter tell one *exactly* how much more important New Hampshire is, given the assumptions of the basic model. We shall next outline possible modifications for extending the basic model and then illustrate its application to empirical data on resource allocations of candidates in the 1976 race, mentioning briefly similarities and differences that appeared in 1980.

[4] There is persuasive evidence that the solution is indeed minimax. First, if $n = 2$, this can be shown with elementary calculus, without the assumption that $a_i = b_i$. Second Merrill (1982) has made numerical calculations on the computer for $n = 3, 4, 5$, and different assumed values of $v_1, v_2, \ldots, v_9$. He found that the local maxima $a_i^* = b_i^*$ yield a higher value of $V = \sum_{k=1}^{n} v_k p_k$ than any other allocations (several thousands were computed) as one moves away from these maxima. Of course, these results do not constitute a proof but they do, in Merrill's words, "provide strong support for the hypothesis that [the] ... solution is a global maximum".

BEST COPY AVAILABLE

4. Possible modifications in the basic model

(1) Although the assumptions of the basic model seem to capture a commonsensical notion of momentum transfer, they may be deficient in a number of ways. First and most serious, new resources are generated in the course of the nomination race, which generally benefit the candidates succesful in the early primaries. Aldrich (1979, 1980b, 1980c) takes account of this in his dynamic models, finding the nomination process to be generally unstable. This lack of an equilibrium tends to increase the chances of one candidate's winning by breaking out of the pack (Aldrich, 1980b).

The stability of the nomination process is not the question we pose in the basic model just described. Rather, it is whether there exist optimal resource allocations by the candidates, and what they are. The fact that candidates can generate new resources in a campaign was not taken account of in the basic model. In our view, it can be by relaxing the assumption of fixed budgets. However, the exact form of a resource-generation function one might incorporate in the basic model is not clear at this point and requires further study.

Alternatively, if the fixed-budget assumption is retained, the model might properly be applied only to adjacent, or small numbers of, primaries, as in the example we gave in section 3 of resource allocation to New Hampshire in week 1, and Massachusetts and Vermont in week 2 (which we shall take up again in our empirical analysis in Section 5). Or it might be applied to those contests a candidate designates as 'important', since a significant aspect of the nomination game is the expectation levels set for candidates (Aldrich, 1979, 1980a; Arterton, 1978a, 1978b; Brams, 1979; Matthews, 1978).

(2) Budgetary limits definitely do not apply to candidates, like John Connally, who refuse government matching funds. There is no upper limit on the resources they can generate and then spend. Operationally, we believe resource allocation by such candidates can best be modeled by assuming that their resources are directly tied to their performance, especially early in the sequence of primaries. So, as we suggested in (1) above, are the resources of candidates who accept matching funds and thereby spending limitations, but the latter must make allocations within a fixed set of constraints. The John Connallys need not, which would seem to imply they should spend massively early since they do not face the adverse consequences of pushing up against expenditure ceilings later.

(3) Whereas the basic model assumes a sequential game played between just two candidates, most nomination races today attract more than two candidates. In fact, however, in an n-person, noncooperative game, a player's optimal allocation would be that given in the two-person model, *given* that the $n-1$ other players all make these allocations themselves, or act as if they do.

We believe nomination races today are essentially noncooperative – candidates do not generally form coalitions or run as stalking horses. Indeed, 'favorite sons' running in individual states seem mostly a phenomenon of the past. Hence, we think

BEST COPY AVAILABLE

an n-person race can probably be adequately modeled as a two-person game, with each individual candidate thinking of the $n-1$ other candidates as the collective opposition, and making optimal allocations as he would in the two-person game. (On issues, however, we believe the game is very different, with candidates striving to become the dominant candidate in a particular segment of the ideological spectrum (Brams, 1978a, ch. 1).)[5] For resource-allocation decisions, nonetheless, the question of whether the two-person model is appropriate, based in part on the results of empirical research, needs to be explored further.

(4) Finally, the functional dependence between a candidate's performance in primary i and his performance in primaries that precede i requires further investigation. Do voters have such short memories that they only remember how a candidate did in primary $i-1$? Or is a candidate's performance in primary i directly – not just indirectly – affected by his performance in the entire string of previous primaries? Or, as another possible assumption, is there a kind of weighting or averaging going on, with more attention given to the candidates' most recent performances? It is hard to say a priori how immediate or remote momentum transfer is, though we believe the optimal allocations derived from the basic model are not implausible. Yet, the implications of other sequential-dependency assumptions need to be checked. At this point, though, it is helpful to look at some resource-allocation data to ground ideas in reality.

5. Preliminary evidence and normative implications

Stringent reporting requirements have made a wealth of data on campaign contributions and expenditures available beginning with the 1976 presidential election (see Brace, 1977, and Alexander, 1979, for the most comprehensive data on, and analysis of, the 1976 election). Because, at this writing, only scant information on resource allocation in the primaries is available from the 1980 election, however, we shall confine most of our analysis to data from the 1976 election. Moreover, even for this election we shall not attempt a full-scale analysis of the evidence but report only a few preliminary results based on Federal Election Commission (FEC) (1977) data.

5.1. Candidates make similar allocations

The product-moment correlation coefficient of financial expenditures in all state primaries and caucuses by Republicans Ford and Reagan in 1976 is 0.90. For Democrats Carter and Wallace, the two candidates who spent the most in the 1976 Democratic Party race, the correlation coefficient is a more moderate but still

[5] Important data on, and analyses of, issue positions of candidates can be found in Page (1978) for the 1972 election, Aldrich (1980a) for the 1976 election.

significant 0.43, which is perhaps a reflection of the fact that the Democratic race was not a two-person one (there were thirteen candidates in all, with some, like Jerry Brown and Frank Church, entering only later primaries), with different candidates placing their bets on different states.

5.2. *There is 'overspending' in early primaries, but it occurs in phases*

Considering the first two sets of primaries as Phase I (New Hampshire, followed by Massachusetts and Vermont a week later), and the second two sets as Phase II (Florida, followed by Illinois a week later), Republican and Democratic candidates in 1976 tended to overspend, as predicted by the model, in the earlier primaries (New Hampshire and Florida), though these states are smaller than those going a week later. For example, Republican expenditures to New Hampshire were 57.3 percent of the Phase I total (model prediction: 56.6 percent).[6] The exception to this rule is spending by the nine Democratic candidates in Phase I in 1976, which was almost three times as much in Massachusetts and Vermont as in New Hampshire, in part because Henry Jackson made Massachusetts a key test and spent massively there. (Since Massachusetts and Vermont had seven times as many Democratic delegates as did New Hampshire, however, there was still disproportionately greater spending in New Hampshire – and accompanying media 'overkill', as one analyst aptly put it (Matthews, 1978, p. 64).) Significantly, Jimmy Carter was the only Democratic candidate in 1976 to spend more in New Hampshire (53.1 percent), practically duplicating the model prediction (53.4 percent), which may say something about the normative value of the model, and Carter's political astuteness in staying close to its prescription for the Phase I primaries.[7]

5.3. *The phases changed in 1980, with even greater overspending in the early primaries*

In 1980, Iowa, the first caucus state on January 22, seriously rivaled New Hampshire, whose primaries were on February 26, as the early focus of attention:

[6] It should be noted that only 18.6 percent of Boston media time purchased to influence the New Hampshire primary was attributed to the New Hampshire campaign budget (Keefe, 1980, p. 236), so this figure probably understates the media blitz in New Hampshire.

[7] Consistent with their financial expenditures, the Democrats spent more time in Massachusetts and Vermont than New Hampshire (an average of 17.5 days versus 10.0 days) in Phase I, though Jimmy Carter reversed this pattern in accordance with the model's predictions (15 days in New Hampshire, 8 days in Massachusetts, none in Vermont) (Aldrich, 1980a; pp. 226–229). In fact, Hamilton Jordan, Carter's campaign director, devised a numerical scheme for assigning points to states that gave extra 'strategy' points to states – in addition to their 'delegate' points – the earlier they went in the sequence of primaries (Witcover, 1977, pp. 135–137). His calculations appear to be totally ad hoc but mirror the thrust of the basic model's predictions. Finally, it is worth noting that New Hampshire dominated in Phase I with respect to television network news stories (63.3 percent) (Robinson, 1976; cited in Matthews, 1978, p. 65).

the candidates reportedly spent an astonishing ten times the amount they spent in 1976 to influence caucus selection there (New York Times, January 21, 1980). As Reagan's successful candidacy demonstrated, however, Iowa is still not a make-or-break state for a presidential candidate (he was beaten by Bush there), as New Hampshire (where Reagan won) has been since 1952 with respect to supporting future presidents. Preliminary FEC 1980 financial expenditure data indicate that candidates in both parties spent less in New Hampshire than Massachusetts and Vermont, in part because some approached or reached the New Hampshire limit (a constraint, as mentioned earlier, not incorporated into the model). Overall, 1980 spending seems to have been greater, proportionately, in most early primaries. In fact, with the races already decided by the time of 'super Tuesday' on June 3 – when there were eight Democratic and nine Republican primaries – candidates spent only about 3 percent of their permitted maximums in these last states.

From a normative point of view we believe that our research helps to clarify certain problems that attend presidential nominations and suggests possible solutions. Consider, for example, the proliferation of individual state primaries and caucuses that has led to a season of contests from January to June in a presidential election year. Is there any reasonable way that delegates could be apportioned to states going later in the season to make up for the seeming advantage that a state gains by going early? One possible solution would be to give early states disproportionately fewer delegates, later states disproportionately more, so as to render a state's influence proportionate to its size, regardless of when it goes in the sequence.

To illustrate, state primaries or caucuses held before March 1 of a presidential election year might have their 'normal' apportionments (based on size) depreciated by 75 percent; those held in March might be depreciated 50 percent, those held in April 25 percent, and those held in May or later might not be depreciated at all. In this manner, a state would not be so anxious to get the jump on other states if its delegate votes were progressively cut the earlier it scheduled its primaries/caucuses.

Although this might sound like a strange – if not radical – proposal, we believe the evident inequities in the present system need careful and rigorous analysis if we are to avoid further burdening a system, already a hodgepodge, with ill-thought-out new reforms. Models like that in this paper, in our opinion, can not only facilitate an understanding of sequencing effects but also can provide a basis for developing weighted voting schemes that ensure equal representation of citizens, and proportional representation of states, in the nomination process.

4. Conclusions

Presidential elections are the most dramatic recurring political event in American politics. The nomination phase of a presidential race, considered by some the most important because it (usually) narrows down a large field of candidates to only two,

consumes our attention for months. Nominations today are governed by a hopelessly complex and little understood set of rules, but probably the most consequential ones are those that provide for the sequence of state primaries and caucuses.

We have proposed a basic model for the optimal allocation of resources in these contests, under the assumption that candidates seek to maximize their expected delegate vote in a sequential game that allows for momentum transfer from early to later contests. Data to test the basic model, and modifications of it, have been described, and possible normative implications of changes in the rules have been briefly discussed.

References

J.H. Aldrich, Before the Convention: Strategies and Choices in Presidential Nominating Campaigns (University of Chicago Press, Chicago, 1980a).

J.H. Aldrich, A dynamic model of presidential campaigns, Amer. Pol. Sci. Rev. 74 (1980b) 651–669.

J.H. Aldrich, A model of the U.S. presidential primary campaign, in: S.J. Brams, A. Schotter and C. Schwödiauer, eds., Applied Game Theory: Proc. Conf. at the Institute for Advanced Studies, Vienna, 1978 (Physica-Verlag, Würzburg–Wien, 1979) pp. 99–117.

J.H. Aldrich, Rational choice and systems modeling: the case of voting and presidential primaries, Working Paper No. 8, Public Policy and Political Studies Center, Michigan State University, East Lansing, MI (1980c).

H. Alexander, Financing the 1976 election, Congressional Quart. Washington, DC, 1979.

F.C. Arterton, Campaign organizations confront the media-political environment, in: J.D. Barber, ed., Race for the Presidency: The Media and the Nominating Process (Prentice-Hall, Englewood Cliffs, 1980a) pp. 3–25.

F.C. Arterton, The media politics of presidential campaigns: a study of the Carter nomination drive, in: J.D. Barber, ed., Race for the Presidency: The Media and the Nominating Process (Prentice-Hall, Englewood Cliffs, 1980b) pp. 26–54.

J.R. Beniger, Polls and primaries, in: J.W. Davis, Presidential Primaries: Road to the White House (Greenwood, Westport, 1979) Chapter 5.

J.R. Beniger, Winning the presidential nomination: national polls and state primary elections, 1936–1972, Publ. Opinion Quart. 40 (1976) 22–38.

K.W. Brace, The 1976 presidential primaries: an analysis of how many people participated and how much money was spent, Report compiled for the (Democratic Party) commission on presidential nomination and party structure, Washington, DC (1977).

S.J. Brams, But they say he won the primary, New York Times (November 27, 1979), p. A23 (Op-Ed page).

S.J. Brams, The Presidential Election Game (Yale University Press, New Haven, 1978a).

S.J. Brams, Resource allocations in the 1976 campaign, Amer. Pol. Sci. Rev. 72 (1978b) 1365–1366.

S.J. Brams and M.D. Davis, Models of resource allocation in presidential campaigning: implications for democratic representation, in: L. Papayanopoulos, ed., Democratic Representation and Apportionment: Quantitative Methods, Measures, and Criteria, Ann. New York Academy of Science: 219 (1973) pp. 105–123.

S.J. Brams and M.D. Davis, The 3/2's rule in presidential campaigning, Amer. Pol. Sci. Rev. 68 (1974) 113–134; reprinted in the Electoral College and Direct Election, Hearings before the Committee on the Judiciary, United States Senate, 95th Congress, First Session, Washington, DC (1977) 515–537.

BEST COPY AVAILABLE

S.J. Brams and P.D. Straffin Jr., The entry problem in a political race, in: P.C. Ordeshook and K.A. Shepsle, eds., Political Equilibrium (Kluwer–Nijhoff, Boston, 1982) pp. 181–195.

Federal Election Commission (FEC), 1976 presidential campaign receipts and expenditures, FEC Disclosure Series No. 7 (FEC, Washington, DC, 1977).

W.R. Keech and D.R. Matthews, The Party's Choice (Brookings Institution, Washington, DC, 1977).

R.J. Keefe, Presidential campaign strategy under the law, in: M.J. Malbin, ed., Parties, Interest Groups, and Campaign Finance Laws (American Enterprise Institute for Public Policy Research, Washington, DC, 1980) pp. 233–237.

M. Lake, A new campaign resource allocation model, in: S.J. Brams, A. Schotter and G. Schwödiauer, eds., Applied Game Theory: Proc. Conf. at the Institute for Advanced Studies, Vienna, 1978 (Physica-Verlag, Würzburg–Wien, 1979) pp. 118–132.

D.R. Matthews, 'Winnowing': the news media and the 1976 presidential nominations, in: J.D. Barber, ed., Race for the Presidency: the Media and the Nominating Process (Prentice-Hall, Englewood Cliffs, 1978) pp. 55–78.

S. Merrill III, Personal communication, 1982.

J. Moore and J. Fraser, eds., Campaign for President: The Managers Look at '76 (Ballinger, Cambridge, 1977).

New York Times, Candidates spending a total of $2.8 million in Iowa caucuses, 10 times the '76 level (January 21, 1980) p. A13.

B.I. Page, Choices and Echoes in Presidential Elections: Rational Man and Electoral Democracy (University of Chicago Press, Chicago, 1978).

M.J. Robinson, Television news and the presidential primary process, unpublished paper (1976).

H.D. Shane, Mathematical models for economic and political advertising campaigns, Oper. Res. 25 (1977) 1–14.

J. Witcover, Marathon: The Pursuit of the Presidency, 1972–76 (Viking, New York, 1977).

BEST COPY AVAILABLE

Presidential Preference Primaries in 1988: Projected Scheduling and Recent Developments

[By Thomas H. Neale and Kevin J. Coleman, Analysts in American National Government, Congressional Research Service, the Library of Congress]

INTRODUCTION

The presidential preference primary has achieved a dominant position as the method most widely used in the process of selecting delegates to the national party nominating conventions. In 1968 the 15 primaries held by both parties accounted for 40 percent of delegates to the Democratic National Convention, and 38 percent of those attending the Republican Convention. In contrast, by 1980 the number of these contests had grown to an all-time high of 35 primaries and 72 percent of the delegates for the Democrats and 34 primaries and 76 percent of the delegates for the GOP.[1]

At the time of this writing, in May 1986, 33 States and the District of Columbia provide for presidential preference primary elections. The actual number held in 1988 will likely be fewer, however, as choice of the means of delegate selection, by primary or other method, is left to the discretion of the party apparatus in a number of States. Moreover, between 1976 and 1984, Arkansas, Kansas, Michigan, Mississippi, Nevada, and South Carolina abandoned the presidential primary in favor of other methods of delegate selection. Recent action by Kentucky, Missouri and Oklahoma to establish presidential preference primaries, and the reestablishment of a primary by Mississippi, as part of the southern regional primary movement, represent a reversal of the earlier trend.

MOVEMENT FOR A SOUTHERN REGIONAL PRIMARY[2]

Perhaps the most significant development in the nomination process for 1988 is the proposal and campaign for a southern regional primary, initiated by the Southern Legislative Conference (SLC). The SLC is the southern States' component of the Council of State Governments, an information and research agency supported by the States for the purpose of monitoring State programs and problems. Under the Conference plan, all southern States would select convention delegates in either primaries or caucuses which would be held between March 8 and 12, 1988.

The SLC began organizing the southern primary plan early in 1986, in an effort to increase the South's influence in the presidential nomination process. The second Tuesday in March was already used for primaries by Alabama, Florida, and Georgia, joined in 1984 by Oklahoma, which scheduled caucuses for the same date, popularly known as "Super Tuesday." An SLC task force settled on the March date an effort to counter the influence of the New Hampshire primary and Iowa caucuses. Proponents of the southern regional primary claim that these two States have an excessive impact on the nomination process due to the early timing of the contests. They further argue that these two States are insufficiently representative of the nation as a whole to warrant such influence on the nomination process.

To date, the southern regional primary effort has met with considerable success. During the first four months of 1986, Tennessee rescheduled its presidential preference primary from May to the second Tuesday in March. "Super Tuesday;" in Maryland, similar legislation has passed both houses of the Legislature and awaits action by Governor Hughes. In addition, Kentucky, Mississippi, Missouri, and Oklahoma have established new primaries, scheduled for the March target date, while Virginia has rescheduled its delegate selection caucuses to fall on the second Saturday in March, which falls on March 12 in 1988. Thus far, only in West Virginia, where the State House defeated a proposal to switch the State's primary date to March 8, has the southern regional primary proposal been defeated outright.

Further developments in this area remain a possibility, as a number of State legislatures have not yet convened for the 1986 session, still others will not assemble until 1987, while in the case of South Carolina, the primary date is left to the discretion of the State party chairmen.

Critics of the "Super Tuesday" plan contend that its sponsors have not considered fully the consequences of a southern primary, contending that it would merely con-

---

[1] Crotty, William, and John S. Jackson, III. Presidential Primaries and Nominations. Washington, CQ Press, 1985. p. 16.

[2] Southern Legislative Conference. Conversations with staff and various press releases, Jan. 1—April 3, 1986.

BEST COPY AVAILABLE

firm the results in New Hampshire and Iowa, and might precipitate further efforts at "front loading" from States hoping to increase their own impact on the nomination process.

A possible early example of this trend may be South Dakota's recent action moving its preference primary from the first Tuesday in June to the last Tuesday in February, which would fall on February 23rd in 1988. One of the intentions of the South Dakota Legislature in revising the date is to draw increased national attention to conditions in American agriculture.[3] This action also has the effect of triggering further adjustment in the primary calendar, as the New Hampshire primary must, by State law, be held on the Tuesday preceding any other primary election, which would result in the New Hampshire contest being held on February 16 in 1988.[4]

Sources consulted in preparation of this report include a telephone survey of State election authorities conducted March 25–31, 1986, codes of election law of the relevant States, and a publication prepared by the Congressional Research Service for the Committee on Rules and Administration in 1984: *Nomination and Election of the President and Vice President of the United States, 1984* (98th Congress, 1st session, Committee Print), by Thomas M. Durbin.

The following alphabetical list of presidential preference primaries as scheduled for 1988 includes statutory day requirement, date of the primary in 1988 computed from statutory requirement, and additional relevant data.

[Current as of April 10, 1986]

Alabama.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: One of the three original "Super Tuesday" southern primaries. At party option, no Republican primary was held in 1984.

California.—Statutory Requirement: First Tuesday after the first Monday in June; 1988 Date: June 7; Remarks: Proposal to move primary date to March failed to pass in the Legislature early in 1986.

Connecticut.—Statutory Requirement: Tuesday after the fourth Monday in March; 1988 Date: March 29; Remarks: No current effort to revise present scheduling requirement. At party option, no Republican primary was held in 1984.

District of Columbia.—Statutory Requirement: First Tuesday in May; 1988 Date: May 3; Remarks: No current or anticipated effort to revise existing scheduling requirement.

Florida.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: One of the three original "Super Tuesday" southern primaries.

Georgia.—Statutory Requirement: Secondary Tuesday in March; 1988 Date: March 8; Remarks: One of the three original "Super Tuesday" southern regional primaries.

Idaho.—Statutory Requirement: Fourth Tuesday in May; 1988 Date: May 24; Remarks: No scheduling change anticipated prior to 1988.

Illinois.—Statutory Requirement: Third Tuesday in March; 1988 Date: March 15; Remarks: No scheduling change anticipated prior to 1988.

Indiana.—Statutory Requirement: First Tuesday after the first Monday in May; 1988 Date: May 3; Remarks: No change in scheduling anticipated prior to 1988.

Kentucky.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: Kentucky did not hold a presidential preference primary in 1984. On February 24, 1986, legislation establishing a primary scheduled for "Super Tuesday" in 1988 was signed by the Governor.

Louisiana.—Statutory Requirement: First Saturday in April; 1988 Date: April 2; Remarks: Legislation to adopt the Southern Regional Primary date, second Tuesday in March, is anticipated when the Legislature convenes, later in April 1986. Proposals to hold the presidential preference primary simultaneously with primaries for State and local office, in order to reduce expenses, are also expected.

Maryland.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: Legislation to adopt the Southern Regional Primary date, second Tuesday in March, has recently been enacted.

Massachusetts.—Statutory Requirement: First Tuesday after the first Monday in March; 1988 Date: March 8; Remarks: No changes anticipated before 1988. Efforts to promote a New England regional primary in 1984 were unsuccessful.

---

[3] Phone conversation, Alice Kundert, Secretary of State, South Dakota, Mar. 28, 1986.
[4] New Hampshire Revised Statutes Annotated, as 653:9.

BEST COPY AVAILABLE

Mississippi.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: Legislation to adopt the Southern Regional Primary date, second Tuesday in March, has recently been enacted.

Missouri.—Statutory Requirement: First Tuesday in March; 1988 Date: March 8; Remarks: Missouri did not hold a presidential preference primary in 1984. Legislation authorizing a primary to be held in accordance with the Southern Regional Primary proposal was signed by the Governor March 18, 1986. Legislation provides for "sunset" review by the Legislature following 1988.

Montana.—Statutory Requirement: First Tuesday after the first Monday in June; 1988 Date: June 7; Remarks: Legislation to change the statutory requirement is under consideration, but passage is considered unlikely by State election authorities.

Nebraska.—Statutory Requirement: First Tuesday after the second Monday in May; 1988 Date: May 10; Remarks: No change is anticipated prior to 1988.

New Hampshire.—Statutory Requirement: Second Tuesday in March, or any Tuesday immediately preceding the date on which any other State shall hold a presidential preference primary election, whichever is earlier; 1988 Date: February 16; Remarks: Recent action by South Dakota changing that State's statutory requirement to the last Tuesday in February, which falls on the 23rd in 1988, will require New Hampshire election authorities to reschedule the primary, barring extenuating circumstances.

New Jersey.—Statutory Requirement: Tuesday after the first Monday in June; 1988 Date: June 7; Remarks: Legislation currently under consideration would alter the statutory requirement to Tuesday after the fourth Monday March. No action has been taken to date on the proposal.

New Mexico.—Statutory Requirement: Tuesday after the first Monday in June; 1988 Date: June 7; Remarks: No change is anticipated prior to 1988.

New York.—Statutory Requirement: None. The date for the New York presidential preference primary is set by the Legislature every four years. The primary is usually scheduled for early April; 1988 Date: Not Available; Remarks: No departure from current practice is anticipated by 1988. At party option, no Republican primary was held in 1984.

North Carolina.—Statutory Requirement: Tuesday after the first Monday in May; 1988 Date: May 3; Remarks: Proposals for change are anticipated when the Legislature convenes.

North Dakota.—Statutory Requirement: Second Tuesday in June; 1988 Date: June 14; Remarks: Proposals for change are anticipated when the Legislature convenes in 1987.

Ohio.—Statutory Requirement: Tuesday after the first Monday in May; 1988 Date: May 3; Remarks: A proposal to change the statutory requirement to the third Tuesday in March, the 15th in 1988, has passed the State Senate. Chances of enactment are considered good by State election authorities.

Oklahoma.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: Oklahoma established a presidential preference primary on March 14, 1986, adopting the Southern Regional Primary date.

Oregon.—Statutory Requirement: Third Tuesday in May; 1988 Date: May 17; Remarks: Proposals for change are anticipated when the Legislature convenes in 1987.

Pennsylvania.—Statutory Requirement: Fourth Tuesday in April; 1988 Date: April 26; Remarks: No departure from current practice is anticipated prior to 1988. Following a one-time rescheduling of the presidential preference primary in 1984 to make allowance for a religious holiday, the Legislature enacted absentee voting for religious purposes.

Rhode Island.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: No departure from current practice is anticipated prior to 1988.

South Dakota.—Statutory Requirement: Last Tuesday in February; 1988 Date: February 23; Remarks: In 1986, legislation changing the statutory requirement from Tuesday after the first Monday in June to the current requirement was enacted. According to State election authorities, it is hoped that placing South Dakota among the earliest primary States will draw national attention to conditions affecting the agricultural sector. This action also has the effect of triggering New Hampshire law which will require a rescheduling of that State's own primary.

Tennessee.—Statutory Requirement: Second Tuesday in March; 1988 Date: March 8; Remarks: In 1986, legislation was enacted changing Tennessee's statutory requirement from the first Tuesday in May to the second Tuesday in March, in accordance with the Southern Regional Primary proposal.

Texas.—Statutory Requirement: First Saturday in May; 1988 Date: May 7; Remarks: No departure from current practice is anticipated prior to 1988. At party option, no Democratic presidential preference primary was held in 1984.

BEST COPY AVAILABLE

Vermont.—Statutory Requirement: First Tuesday in March; 1988 Date: March 1; Remarks: No departure from current practice is anticipated prior to 1988.

West Virginia.—Statutory Requirement: Second Tuesday in May; 1988 Date: May 10; Remarks: Current statutory requirement represents a change from the earlier practice, Tuesday after the first Monday in June, enacted following 1984. Southern Regional Primary proposal was considered in the Legislature but was defeated in the House. State election authorities attribute the defeat to the extra cost involved in establishing a presidential preferene primary held separately from other State primary contests.

Wisconsin.—Statutory Requirement: First Tuesday in April; 1988 Date: April 5; Remarks: No departure from current practice is anticipated prior to 1988.

1988 PRESIDENTIAL PRIMARY CALENDAR

[Current as of May 9, 1986]

February 16, New Hampshire; 23, South Dakota.

March 1, Vermont; 8, Alabama, Florida, Georgia, Kentucky, Maryland,[1] Massachusetts, Mississippi, Missouri, Oklahoma, Rhode Island, Tennessee; 15, Illinois; 29, Connecticut.

April ?, New York;[2] 2, Louisiana; 5, Wisconsin; 26, Pennsylvania.

May 3, District of Columbia, Indiana, North Carolina, Ohio; 7, Texas; 10, Nebraska, West Virginia; 17, Oregon; 24, Idaho.

June 7, California, Montana, New Jersey, New Mexico; 14, North Dakota.

Mr. SWIFT. In addition, I would like to propose to hold the record open until 1 month from today for the receipt of additional materials that we may wish to include.

With that, I recognize the ranking member, the gentleman from California.

Mr. THOMAS. Thank you, Mr. Chairman.

I think it is good now that we move into some particular bills. The first hearing was worthwhile—and I hope this one is more worthwhile—in focusing on not just the dynamics of the 1988 primaries, in which there is speculation about a regional, how great a regional is, or how many regionals, but the fact that the changes that are being contemplated in the primary process, whether regional or not, will have an impact on national party conventions and will have an impact on the selection of candidates for President. So when we talk about convenience in terms of dates, let's understand that we may be putting in motion some fundamental changes in the system that will reach all the way to who is selected to run by a particular party for the White House.

Unfortunately, I will not be here with my friend, Chuck Manatt, in terms of his testimony. I have just been informed that we're having a briefing on the Senate tax package by the Ways and Means structure and, in terms of topicality, that is one that I have got to visit. I look forward to your testimony, and I especially look forward to the academic testimony on the question of constitutionality. I think that will be one area in which a number of our members will want to focus very carefully.

Thank you very much, Mr. Chairman.

Mr. SWIFT. I thank the gentleman.

We have a very distinguished series of people at today's hearing. We want to begin right away, and we will do so with the former chairman of the Democratic National Committee, Charles Manatt.

---

[1] Pending final action on legislation.

[2] Date to be set by New York State Legislature.

BEST COPY AVAILABLE

Chuck, welcome to the committee. Please proceed in any way you choose.

TESTIMONY OF CHARLES T. MANATT, FORMER CHAIRMAN, DEMOCRATIC NATIONAL COMMITTEE

Mr. MANATT. Thank you, Mr. Chairman. I am especially pleased to be here with you and Mr. Thomas. However, I certainly understand why Mr. Thomas needs to go to another briefing.

I thank you for this opportunity, Mr. Chairman, to appear and to offer my views on the possible reform in the Presidential primary process, a puzzling, tough and confusing area, to say the least. But I do applaud your efforts to attempt to bring some rationality to what has really become a disjointed system for selecting a President.

As a former party chairman of the Democratic National Committee, I well understand the difficulty of balancing the many conflicting interests of the State and national political parties, the candidates and State election officials around the country. I commend you for taking on this most difficult and yet very, very important task.

At long last, I think the idea that the primary season is too long, perhaps too exhausting to candidates, and certainly tries the patience of voters, seems to be making some headway. Your consideration of this legislation to bring some order out of the present chaos I think amply demonstrates that fact.

Consider, if we can—and you and I can easily do it, and other people in the room might not remember—consider 1960 and the Presidential nomination politics of that year. That year, for example, John Kennedy was considered to be an early starter when he announced his campaign on January 3, 1960. He had held his crucial organizing meeting in October 1959. Now, what we need to do is compare that timeframe with the chronology of the 1984 and 1988 Presidential races, one of which is past and one of which already is upon us by virtue of the activity of many candidates.

Since 1960, we have also had an enormous growth in the number of States holding primaries, so that candidates must organize their campaigns both at distant and distinct locations around the country. A prime example of this phenomenon, of course, is, at the end of the campaign in 1984, when we had a primary day in California and New Jersey at the very end of the campaign, when the candidates and their staffs were often drained of physical energy, financial resources and lots of things, yet that was the task given them on the last day.

I am especially encouraged to see that the subcommittee, Mr. Chairman, under your good chairmanship, is proposing in H.R. 1380 that a Presidential "window" of some form be held between perhaps the second Tuesday in March and the second Tuesday in June. I think this would have the effect of shortening the election season somewhat, and I think that is needed. However, today, I think, perhaps reluctantly at first, but nevertheless my conclusion is that in the future a regional series of primaries should also be considered.

BEST COPY AVAILABLE

The establishment of a regional primary system by Congress over a substantial period of months, such as the window proposed in H.R. 1380, I think would be an important reform, for several reasons. Congressional action this coming time, of course, could ensure that regional primaries would be held perhaps after the southern regional primary, the so-called "Super Tuesday" on the opening of that window, and could be spaced out in a sensible fashion. Otherwise, I think, the other regions and other States might well be moving their primaries up to within a week or two of that opening of the season, effectively putting the campaign to end perhaps by late March or early April.

The next panelist, a witness this morning, is a distinguished national pollster and strategist. Mr. Caddell and I have often been concerned about the "front loading" in the primary season. I can see every reason to believe that 1988 will be the master of the front-loading process. I think, as a national policy goal, that should be considered by the committee, that we don't want rather than do want a national primary. I think the congressional establishment of a system of regional primaries would put that idea perhaps to rest, and I think that idea is a very bad one. In my view, a national primary would be an overreaction to the desire to reform the current system.

Forced to be everywhere at once, such a campaign with a national primary would result in very little, if any, direct contact with the voters, airport stops, at best, in different parts around the country, many smaller States being ignored altogether, and with no assurance at all of a winnowing process to go through to test the candidates. Perhaps the winner of this national primary, through essentially a slick television and radio campaign, might only have 24 percent of the vote when the whole national primary itself is over. So I think, as a national policy goal, certainly in my judgment it's an important thing to avoid that result.

With the prod of Federal legislation, I think efforts to reform the primary season will have some success. During my tenure as national chairman from 1981 to 1985, I too sought to shorten the primary season for 1984. We did that to a degree. We moved up Iowa I think 5 weeks, in New Hampshire 1 week, in the totality of it all. Perhaps one story will show you the difficulty from the national party standpoint on how you do it.

We adopt the party rules. That's the season in which the party and its chairman and its officers have great sway in what happens. Then we get into the candidate phase. Very quickly the gravamen shifts to the candidates as far as what they can and cannot do. Once beyond the primary season, of course, it is the nominees or the leading candidates for the nomination that really have charge of the process.

And so it was in 1981 and 1982. A very nice man, Governor Gallen of New Hampshire, explained to me that the only thing needed that was critical to his reelection in 1982 was, in fact, having a special position retained for the New Hampshire primary.

Well, the law of unintended consequences, as Pat Caddell often calls them, unfortunately, at least in two ways, came to pass. One, we didn't know Governor Gallen was going to be defeated, and number two, unhappily, we didn't know he was going to pass on.

BEST COPY AVAILABLE

My unintended consequence, of course, was, after having agreed to that, having everything in place, a new Governor then came in and decided that some form of beauty contest in a neighboring State that didn't pick a single delegate was obviously very similar to what the New Hampshire process would be. So they immediately moved to change a week or so forward, triggering Iowa's change and other things such as that.

It reminded me of the time, and still does, of the first day of school, when my son Timothy, when he was 5, would jump from the middle seat to the back seat to the front seat of the station wagon, trying not to go to school that morning.

What happened in the process in 1983 and 1984 was, every time someone would get in place, then another State would move and jump. The party rules don't exactly provide for the ultimate ability to have suasion over the candidates because, obviously, people in each State will go to the different candidates, find at least one saying "absolutely State so-and-so should have it's rightful claim", and then, of course, we're away to the races. This time I think it's South Dakota that may well be the one that is the most likely candidate to trigger a change in New Hampshire and Iowa, other States claiming an earlier claim to fame.

Another major complaint about the current system is its cost. Now, I frankly don't believe we're ever going to find a way to nominate our Presidents inexpensively, but I think we can develop other ways to reduce the dominance of the time spent in fundraising in the campaigns. One way, and one I would recommend to your committee, Mr. Chairman, is to raise the limit on individual contributions to at least $2,000 for a presidential race, and second, to raise the Federal match, that amount matched to the private contributions raised, from the current $250 to at least $1,000. There is no reason to hold candidates hostage to limits set a decade ago, which in real dollar terms today, of course, are worth less than half of what they might have been at that time.

That result, I think, would give the candidates greater attention and opportunity to give attention to the voters and the issues, rather than merely rushing around the country in an endless quest for funds.

As you consider the reforms, the window as proposed in 1380, the regional primary system, I would also suggest you turn your attention to one other item; that is, an advisory opinion issued by the Federal Elections Commission on March 14. It was issued this year regarding Vice President Bush's multicandidate political action committee.

In so doing, I don't single out Mr. Bush, but that was the advisory opinion requested. The Commission had held repeatedly, of course, that PACs such as Mr. Bush's, Fund for America's Future, may make contributions to candidates in Federal, State and local offices within the boundaries of the law. However, in its most recent opinion, or the one in March, brought about by Mr. Bush's early activities in Michigan, the Commission now, for the first time, has effectively permitted a Presidential aspirant's political action committee to spend limitless amounts of money to influence the selection of delegates to a national party convention.

BEST COPY AVAILABLE

If you are seriously interested—and I know you are—in shortening the overly long presidential nomination process, and ensuring perhaps that even some lesser known candidates have some chance of competing, I think this opinion issued by the Federal Elections Commission goes in the opposite direction in a very dramatic way from where we want to go.

In closing, let me simply reaffirm my belief in the truest sense that we can only reform the primary process if we reach beyond traditional candidate rivalries and reach across partisan divisions. Republicans and Democrats together in Congress can bring about changes that can never be achieved, frankly, without a vision of what is the fairest and best for the entire Nation. I think avoiding the policy goal of a national primary day. I know of no better form of doing than Congress and I applaud your efforts.

STATEMENT OF CHARLES T. MANATT, FORMER CHAIRMAN DEMOCRATIC NATIONAL COMMITTEE

Mr. Chairman and members of the Subcommittee, I thank you for this opportunity to appear before you to offer my views on reform of the presidential primary process.

I applaud your efforts to bring some rationality to what has become a disjointed system for selecting a president. As a former Chairman of the Democratic National Committee, I well understand the difficulty of balancing the many conflicting interests of the state and national political parties, the candidates, and state election officials. I commend you for taking on this difficult and often frustrating task.

At long last, the idea that the primary season is too long, is exhausting to candidates, and tries the patience of voters, seems to be making some headway. Your consideration of legislation to bring some order to the present chaos demonstrates that fact.

Consider for a moment what has happened since 1960 to presidential nomination politics. That year, for example, John Kennedy was considered to be an early starter because he announced his candidacy on January 3rd. He held the crucial organizing meeting of his campaign in October of 1959. Compare this chronology with 1984 or with the 1988 campaign, which is already well underway for many prospective candidates.

Since 1960, we've also seen enormous growth in the number of states holding primaries, so that candidates must organize campaigns simultaneously in distant locations. A prime example of this phenomenon is the staging of primaries on the same day in California and New Jersey at the end of the campaign, when candidates and their staffs are often drained of physical energy and financial resources.

I am encouraged by many of the reforms the subcommittee is considering. H.R. 1380, which would require that presidential primaries or caucuses be held only during a "window" from the second Tuesday in March to the second Tuesday in June would shorten the election season somewhat, and that is a needed step. However, the "window" should be coupled with a regional primary system.

The establishment of a regional primary system by Congress over a period of several months would be an important reform, for several reasons. Congressional action could ensure that regional primaries held after the Southern "Super Tuesday" would be spaced in a sensible fashion. Otherwise, it is possible that other regions of the country might hold primaries soon after "Super Tuesday", effectively putting an end to the campaign by late March or early April. Although many voters and candidates favor a shorter primary process, this would be too short a period for the candidates to be tested and considered.

Congressional establishment of a system of regional primaries would also put an end to the what I believe is a particularly bad idea—a nationwide primary election. In my view, a national primary would be an overreaction to the desire to reform the current system. Forced to be everywhere at once, such a campaign would result in even less direct contact between candidates and voters than under a regional system and would bring about even wider use of slick television and radio spots.

Without the prod of federal legislation, efforts to reform the primary season will meet with limited success. During my tenure as Chairman of the Democratic National Committee from 1981 to 1985, I sought to shorten the primary season for 1984. We made some progress—the Iowa caucuses were held five weeks later than

BEST COPY AVAILABLE

in 1980 and the New Hampshire primary came a week later, but we could not do much more. Despite the best efforts of national party officials, these states will continue to press their claim to be first. And presidential candidates cannot afford to challenge this claim for fear of offending the voters. This is no way to pick a president.

One or two states, regardless of the way things have been done in the past, do not have the right to continue exerting an inordinate amount of influence over the dynamics of the entire campaign.

Another major complaint about the current primary system is its cost. I frankly don't believe that we're going to find a way to nominate presidents inexpensively. But we can develop a way to reduce the dominance of fundraising in campaigns. One way would be to raise the limit on an indivdual contribution to $2,000. At the same time, we should match the first thousand dollars, rather than just the first $250.

There is no reason to hold candidates hostage to limits set a decade ago—and which, in real dollars, are worth only half as much today. The result of such a change would be that candidates could pay greater attention to the voters and the issues, rather than rushing all over the country on an endless quest for funds.

As you consider ways to reform the presidential primary process, I would also like to turn your attention to the advisory opinion issued by the Federal Election Commission on March 14th of this year regarding Vice President Bush's multi-candidate PAC.

The Commission has held repeatedly that multi-candidate PACs such as Mr. Bush's Fund for America's Future may make contributions to candidates for federal office, and also to state and local candidates, within the boundaries of state law.

In its recent opinion, brought about by Mr. Bush's early activities in Michigan, the Commission for the first time effectively permitted a presidential aspirant's PAC to spend limitless amounts of money to influence the selection of delegates to a national party convention.

If you are seriously interested in shortening an overly long presidential nomination process and in ensuring that lesser known candidates have some chance of competing, I urge you to take steps to put an end to this practice.

In closing, let me reaffirm my belief that in the truest sense, we can only reform the primary process if we reach beyond traditional candidate rivalries—and across partisan divisions. Republicans and Democrats in Congress can bring about changes that can never be achieved without a vision of what is fairest and best for the entire nation. I know of no better forum than Congress for achieving this goal.

Mr. SWIFT. Thank you very much, Mr. Manatt.

Teddy White, after the last election, made the following observation. He said:

> The primary system today bounces crazily from State to State, hobbled by bizarre party regulations, dominated by dramatic needs of television. By 1988, it is certain that both parties will be holding primaries simultaneously in a free-for-all that will confuse everyone. New public laws, not new party regulations, are needed.

First of all, his prediction seems to be coming true.

What I would like to explore with you a little bit is why the parties have been unable to deal with this themselves. I introduced a regional primary bill a number of years ago, and when the Supreme Court made very clear that it was within the parties' rights to establish this, I backed off, hoping that the parties would be able to take care of it. It hasn't worked out.

Could you give us some indication of why you believe that the parties haven't been able to deal with this problem?

Mr. MANATT. Very much so, Mr. Chairman. My reference earlier was to the entire presidential season. First, the Republican Party, I believe, adopts their next election rules at the prior convention. The Democratic Party—in my time, the Hunt Commission under Governor Hunt, and more recently, of course, a very distinguished commission under Don Fowler of South Carolina—adopt the new rules for the next season, in this case, 1988. That goes along well, in my experience, up until the time when some State or election

BEST COPY AVAILABLE

jurisdiction, in the case of my experience—I mentioned New Hampshire and Iowa—then decide they want to move outside of the agreed-upon time frame that was provided for in the party rules.

At that stage you're in the candidates phase. You have candidates who have spent lots of time and money and effort trying to woo the voters of either those two States or any other State that you might want to determine, and they are really held hostage to whatever it is the election jurisdiction—in this case two different States—want to do as far as changing the rules at that time. So the real strength of it goes to the candidates at that time.

Then, once you get further into the process, then it shifts again to the hands, really, of the leading candidate, or perhaps the obvious nominee. So the parties can do a great deal, and we have, frankly, as far as dealing with a wide variety of different changes in procedures that States want, but we can't ultimately control it once you get into the campaign season. Then it shifts to the candidates.

Mr. SWIFT. Do you think that legislation should apply to caucuses and primaries both, or only to primaries? What do you do with States that choose to run caucuses rather than primaries?

Mr. MANATT. The option of caucuses, I think, should be certainly provided for. If the caucuses are within the "window" that would be provided for in 1380, for example, I don't see that they would necessarily have to be at precisely the same time as States within a certain geographical area who choose to have the primary season.

Mr. SWIFT. You would put the caucuses, though, within the window, along with the primaries?

Mr. MANATT. Oh, yes, absolutely.

Mr. SWIFT. What about straw polls, preference primaries, beauty contests—are they important enough for us to try to find some means to put those inside the window, or should we just let the people play those games if they want?

Mr. MANATT. Well, obviously, my belief is we would be much better off if we didn't have the time and energy expended on the so-called straw polls, both by party rules and party actions.

We tried to do that, for example, in 1983 and 1984. It went along so well that at my own State convention, my own Senator Cranston decided a good strategy for a boost to his campaign would be to have a straw poll in his own State. The very first State that violated what I thought was a rule we had adopted was California itself, as far as the Democratic State convention.

I think to a large degree congressional legislation cannot deal simply or deal effectively with straw polls. If they want to have it at a party convention or at a party caucus, something like that, there is little that can be done to avoid it. But again, under the fine leadership of my successor, Mr. Kirk, we on the Democratic side are attempting to avoid that process. The first time it came up was at our national committee meeting 2 months ago, in which all of us, as members of the DNC, agreed not to respond to a straw poll on that occasion. Perhaps that will set some standard for the future.

Mr. SWIFT. The problem seems to be that, regardless of what disclaimers the media, particularly television, put on the coverage of straw polls, the fact is they seem to carry the same weight in the

BEST COPY AVAILABLE

public's mind as a primary that actually assigns delegates. Therefore, it seems to have significantly the same effect as if you had a regular primary.

Mr. MANATT. There are different kinds of straw polls and sample ballots used. A lot of them are used by the media themselves. Of course, to get the attention that the particular people want to have from the media, they will respond to the media's request for the straw poll itself.

A few States, Vermont being among them, have the so-called beauty contest, the nonbinding beauty contest. I can absolutely assure you that the same response and the same attitude is given to those by many of the candidates as if they were picking delegates. I think you're absolutely right on that.

Mr. SWIFT. The current system has been defended before this committee, and in other fora as well, as one that permits lesser known candidates to have a greater chance. They say they need the small States so that they can operate with fewer financial resources and so forth.

Is there merit to that argument, that you should have a handful of small States go early, so as to help lesser known candidates? Is that a reasonable judgment?

Mr MANATT. In my judgment, it is up against now this entire move to front load the activities, first with a larger southern regional primary coming up this year—I suspect Pat and others in their testimony will identify additional States. I think 25 States, nearly half of our States, could well go in the first 3 or 4 weeks this coming time. If that's true, without some form of regional discipline in the regional primary system, there won't be any chance for the lesser known candidates to be able to actually present themselves in a way effectively to come through to the voters.

Mr. SWIFT. You made reference in the very last part of your presentation to a national primary. Would you like to expand on your opinion of a national primary and what advantages or disadvantages it has as opposed to a regional primary system of some sort?

Mr. MANATT. A national primary, in and of itself, to me is a very bad national policy goal for the committee to consider. There are several problems, of course. There is absolutely nothing in it for the lesser known candidate. Second, it is entirely going to be a television and radio-type campaign with no real identification with the voters, or the chance to really get to know the positions on the issues by candidates other than simply through the media.

In addition, there is absolutely no winnowing out process as far as—Well, a candidate might do well in the first primary, or regional primary, under the proposal being considered by your subcommittee. But then he or she wouldn't do well on the third or fifth one. That's an important thing to learn, to see through the testing process how they would come out.

With a national primary, it's all on one day, it is all one type of primary, and there may well be, as I mentioned, that 24 percent might be the highest amount of delegate strength any one candidate would get on national primary day. Obviously, that doesn't move a party toward a consensus in the nomination.

Mr. SWIFT. One last question before I recognize Mr. Frenzel.

BEST COPY AVAILABLE

Some people have argued that the party convention, the national convention, has been dead, for some time, but we just haven't buried it yet, that it's an anachronism, that a combination of these primaries and the media coverage of all of these things have superseded it.

One, do you agree with that, and two, is there any consideration we ought to give as a committee, in trying to decide how to proceed here, that should move in the direction of ignoring the conventions or, conversely, depending upon your view, could help revitalize the national conventions as an important part of the process?

Mr. MANATT. Well, as you know, Mr. Chairman, some interesting things happen on the way to conventions. I have had some personal experience with that myself. As such, I think both of the party conventions—frankly, I haven't been to a Republican convention in recent years—serve a good of bringing together party leaders from all over the country, for the chance to plan and discuss and debate the campaign plans and different things that come up, not just at the Presidential level, but House and Senate, governorships, and other things as well.

I would not have any strong recommendation for a format change in either of our two conventions. Some years ago, you may recall, in the early seventies, there were abuses relative as to how party conventions were financed. Now, with the Federal financing that Mr. Farencoff and I both supported the last time, and also actually asked for additional security assistance, both of those last two conventions I think went very well.

So perhaps I'm not the right one to ask. I think the party conventions should be retained, they largely are useful in the modern era, in a different way obviously than they would have been 50 years ago.

Mr. SWIFT. The gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I regret my tardy entrance. I will just thank the gentleman for his testimony and I yield back the balance of my time.

Mr. SWIFT. One last question, Mr. Manatt.

Maybe you could counsel the committee on timing. One of the ironies is that, as we look at this problem more than 2 years before the next Presidential election, people have already laid strategy based upon the current rules. The committee could be accused, perhaps by Mr. Gephardt in our party, and perhaps by Mr. Kemp in the other party, for messing around with the rules after the game has begun, because I believe both have a certain Iowa strategy that they're working, and perhaps a New Hampshire strategy.

Do you believe that if we were to undertake to provide a window or deal with any of the other legislation before us, that we can realistically make that effective for 1988, or are we pretty much forced by this whole phenomenon we're dealing with to postpone any effective date until 1992?

Mr. MANATT. My judgment would be that probably 1992 would be the first effective time in which it really could be implemented. After the 1988 election, of course, we will have been through at least one rather major regional primary and have a chance to have that experience. But you are so right. The campaign plans are being predicated on the other bases.

BEST COPY AVAILABLE

Last evening I had a chance to visit with your colleague and Mr. Frenzel's, Mr. Gephardt, and he is exactly planning strategy as you have outlined.

Mr. SWIFT. It also would seem to me that those who are very eager to try the regional primary—whether it be the southern regional primary or some things that some of the other States are doing—that at this point, to interfere with their chance to see how that will work, would be resisted, and I think understandably so, even though the back of my neck says they may well end up with a disaster on their hands individually and perhaps we will also see anarchism to an incredible degree when we've gotten through this 1988 primary season.

But my sense is almost that those forces are afoot and are moving and it is perhaps better to let it happen, and then sit down and take a look at it and see what ought to be done, rather than try to head off whatever is going to occur. That's a "small p" political judgment and I would be interested in what your thoughts are on the timing from that standpoint.

Mr. MANATT. I suspect you will have a very important briefing—or, shall we say, an underscoring—of what to expect in the southern regional primary through the testimony of Mr. Caddell. A lot of the concerns shared, frankly, by Mr. Caddell and myself will, I think, point in the direction of something that could be done and should be done. But, in my "small p" political judgment, I don't think any major congressional change can be made prior to the 1988 races, because the party rules of both parties have been adopted and the process is already moving forward.

Mr. SWIFT. Mr. Manatt, thank you. Your testimony has been extremely helpful to the committee. Your experience and judgment are important as we continue our deliberations. Thank you.

Mr. MANATT. Thank you, Mr. Chairman, and Mr. Frenzel.

Mr. SWIFT. The next witnesses are a very distinguished panel: Mr. Richard Scammon, director of the Elections Research Center, and Mr. Patrick Caddell, president of Cambridge Survey Research. We welcome you both to the witness table and thank you very much for being willing to share your expertise with this committee.

I will recognize Mr. Scammon first. You may proceed in any fashion that you choose.

TESTIMONY OF RICHARD SCAMMON, DIRECTOR, ELECTIONS RESEARCH CENTER

Mr. SCAMMON. Thank you, Mr. Chairman. Let me comment only briefly, if I may, on several points that have been raised, both here and in the testimony that was taken before.

Two particular points. Quite frankly, with all due respect to the testimony you have heard and will hear, I am not sure that regionalization, windows, and the rest of this is going to make a great deal of difference.

Basically, Mr. Chairman, you alluded to one problem in all of this, that public opinion is expressed through elections and it affects the nominating process. But it is also expressed through Mr. Caddell's activities, those of Dr. Gallup, the Harris organization and the networks, through a whole series of public opinion polls

BEST COPY AVAILABLE

which make available to every party activist, every State chairman, every party chairman, everybody, the so-called "horse race" standings of candidates. There is no way, really, in which windows in a primary election can change the public perception of the candidates before the process begins.

Now, once it starts, it can change very rapidly, as Patrick can testify from the last Presidential election. But it is really impossible to go into a Presidential process with a blank slate. People have ideas; they express these ideas; they're analyzed; they re looked upon. As a matter of fact, as you know, in 3 months time you begin the 1988 nominating process. By the selection of precinct delegates in the State of Michigan, who will, through the normal escalation of the process, eventually elect delegates to go to the national convention, of at least the Republican party.

I would doubt very much if legislation at the Federal level could really change a great deal. The process of voting, the process of election, the process of campaigning, is much less under the control of Federal legislation than is, for example, holding the general election on the first Tuesday after the first Monday. It is interesting to note that in the State of Louisiana the whole election process for the Congress, both in the Senate and the House, has been changed basically from the idea of voting in November to the idea of voting in September. In most cases, in the State of Louisiana today, members of this body are elected not in November but in September, as they used to be in Maine.

You simply cannot, in the long sense, so mold public opinion by only dates changing that you can arrange this thing to achieve the best managed—indeed, if that's ever possible—or to make the other kind of changes that I think are in many people's minds, not only in the committee but in the general public as well.

The second point I would like to make, related again to past testimony, is a real concern on my part, as a Minnesotan, with the premise that some Federal electoral body, the FEC or somebody else, should have the right to impose upon the States a requirement that voters must vote in a closed primary as opposed to an open primary. I think the melancholy experience of the Democrats in trying to force this system upon those voters of Wisconsin, and the consequent rebellion of the voters in Wisconsin and the unwillingness of the Democratic National Convention to unseat the Wisconsin State delegation, which is the ultimate sanction available to the parties in these cases, would lead to a great deal of concern about a dictate from Washington that you must vote, you must declare publicly your party registration, and vote only in that party.

A third point raised by the submission of the "rainbow" group I think is a valid one, although not necessarily for consideration at this time by the committee, but simply for mention. In the last election we had 14 candidates for President (other than Mr. Reagan and Mr. Mondale), on the ballot in at least one State. Unfortunately, it is possible that Federal legislation in the field of primaries might be read to make it even more difficult than it is now—and it is difficult enough now—for a third candidate, or a whole host of third candidates—crazzies, smart people, left, right, center, anybody—to be able to get on the ballot.

BEST COPY AVAILABLE

I have never felt that a choice amongst 16 candidates was necessarily improper. In filling the vacancy created by Mr. Johnson's election to the Vice Presidency, there was a special election in Texas in which no less than 72 candidates' names appeared on the ballot. I think this is a healthy thing. You may get a little tired if you're counting ballots, particularly if they're on paper, but it is a healthy thing to let people run if they want to without undue restriction.

In sum, as to the timing, there is certainly a great deal of concern on the part of the general public and in the House on this matter. If you want to change it—I don't think it would change very much, but fine. In 1992, certainly the observations made both by the Chair and Mr. Manatt are relevant.

On party registration, compulsory party registration, I hope this can be avoided, and third, lastly, I hope that some arrangement could be made, if there is to be Federal legislation in this field, not to make almost impossible the running of non-Republican and non-Democratic candidates.

Thank you, Mr. Chairman.

Mr. SWIFT. Mr. Scammon, thank you very much.

We will hold our questions until we have heard from Mr. Caddell.

TESTIMONY OF PATRICK CADDELL, PRESIDENT, CAMBRIDGE SURVEY RESEARCH

Mr. CADDELL. Thank you, Mr. Chairman. I appreciate the opportunity to testify.

I have been involved in Presidential primary and general election campaigns since 1972—in fact, in each one of them, 1972, 1976, 1980 and 1984—and have spent some time studying or being involved in shaping or actually reacting to changes in the nomination process, particularly in terms of the rules of the Democratic Party.

It once was said that war is too important to be left to generals. I have now reached the conclusion that the question of shaping the electoral process may be too important to be left to those people who are party officials themselves. I must say, I come here today in a role that I never believed I would find myself, which is advocating that the Federal Government, that the Congress actually institute congressional legislation to, in fact, impose some order to the nomination process of both parties. It is something that I never believed I would come to, but I come to it out of a sense of urgency or crisis that I think is building in the nomination process, some of which was evident in Chairman Manatt's statements and some of the articles and concerns that have been raised by others.

My first concern, though, about the legislation in front of us—and I will deal with it more specifically—however, is the same admonition I have given to my own party. I must say the reason I am advocating congressional responsibility is that the Democratic Party, my party, which has essentially been the prime mover in shaping the nomination process, has essentially decided to abdicate its responsibilities, both to the party at large and its responsibilities to the entire country in terms of the citizenry.

BEST COPY AVAILABLE

Part of the problem over time has been in the shaping of the electoral process—I say this to those of you who are considering this and looking at these bills—which is what I call the painful lesson we have learned of the law of unintended consequences, when one goes in to make a small incremental change in the system without considering what the impact far down the line in other parts of a very intricate and complex system are.

There are three points I would like to make about this when one is considering changes. Changes cannot be tallied in a vacuum. It is impossible to assess changes individually. Each must be viewed in relation to all others and to the system as a whole.

Second, the changes are not imposed on a static system. Each change alters the behavior and performance of the entire system, generally in ways that are severely underestimated at the time the change is made.

Third, the goals sought by change are often and regularly undone by the consequences unanticipated and unplanned for; thus, those who would make reforms I think need to be vigilant and sensitive to the possibilities of these unintended consequences.

A moment ago I spoke to the question of why I thought there was a crisis developing, and I don't think we need to wait until 1992 or after 1988 to answer the question that was asked by one of the former German chancellors in 1915 to the current incumbent of that office, when he said, looking at the carnage of the Western Front, he said "How did all of this happen?" His predecessor looked over and said, "Ah, if one only knew."

I think we already know what is going to happen The question is how dangerous or nondangerous will the result be. But the forces at work are very clear. If you ask anyone on either side of the aisle, who is either astute academically or a participant or operative in the political process, I think there would be almost universal agreement that the worst system for this country in choosing the nominees of the President of the United States for the political parties would be a national primary system.

And yet, after every session, after every group I have attended in terms of the reform commissions, after making that statement, we have pushed ourselves to, in fact, establishing a de facto national primary. We had a semi-national primary in 1984. We are promised a full-blown de facto national primary in 1988. If you look at the calendar of States that are already in motion, and look at the number of delegates who are likely to be selected within the first 3 weeks of the system, when the window of the Democratic Party opens, we may have between 60 and 70 percent of all the delegates of the Democratic Party determined by the end of March.

Let me just start by saying all of this is predictable. Many of us who appeared before the Fairness Commission, or served on its technical advisory committee, warned that this was going to happen, that it was inevitable, that the incentives in the system to push up and front load the system, as they had been in 1984, were very great, and that States, if you will, acting in a theory of economic self-interest, would pursue that course, and that the results we have seen not only in the southern regional primary, the efforts to impose that, but the reaction of the other States in the West, particularly California, other States like New Jersey and other

BEST COPY AVAILABLE

States in the Midwest in reaction to this, Ohio, I think only bears this out.

Unfortunately, the Democratic commission, the Fairness Commission, and the Democratic National Committee, which itself selected its body to write its own rules, essentially tended, I think, to ignore, if not stifle, any real consideration of this matter. The result is we have what we have now.

The irony of the system in what's happening with the southern regional primary is that it has very little to do with just the South. It has to do with the entire system. First, it is an effort, we are told by the people who are proposing it, to limit the impact of New Hampshire and Iowa by all rushing up to be right after them. It puts Iowa and New Hampshire in sort of the position of Br'er Rabbit, in which he is saying, "Please, please, don't throw me in the briar patch." If anything, this movement intensifies the importance of Iowa and New Hampshire and, in fact, makes them not only decisive but perhaps determinative of who the Democratic or Republican nominees will be.

Second, it was argued as an effort to "add a moderating influence" to the Democratic party's selection process by the reaction of southerners to the Democratic nominee in 1984. I would ironically point out that it was, in fact, the Southern States on "Super Tuesday" and later in the process that saved Vice President Mondale's nomination and ensured that he would be the nominee. If the Southern States had not done that, he would not have been the nominee.

Third, the argument that the South will act as a different kind of brake on the system really flies in the face of the evidence of what happened in 1984, when Senator Gary Hart, upon winning the New Hampshire primary, managed in the space of 5 days in the Southern States, where his universal recognition was about 5 percent on the day before the primary—and where he had about 3 or 4 percent of the vote before New Hampshire—to be in a position within a week or 10 days later to be at 30 to 40 percent of the vote, with 50- or 60-percent recognition. The South operated as did most of the other States in the country and were not that much different. All we are doing is, in fact, taking 1984 and intesifying the process even more.

I want to point out one thing that I think is significant about this, because it goes to the larger issue, which my good friend and mentor in many ways, Dick Scammon, mentioned, which is the right of the people to choose, that this is public opinion and it is the people's decision.

I think there is a universal feeling, even among those of us who are Democrats, who in a partisan or ideological way have opposed the President, that his election in 1980 obviously met a perceived need by the American people and one that they have reacted very positively to. If the system that we had in place in 1984, and are now intensifying in 1988, had been in place in 1980, I can pretty much guarantee you that Ronald Reagan would never have been the nominee of the Republican party or President of the United States.

I say that for this reason. Upon losing the Iowa caucus, if that had been the situation, he had 1 full month, between Iowa and

BEST COPY AVAILABLE

New Hampshire, to recoup his situation, to force attention to George Bush and for half the voters in New Hampshire to make a different determination. In that period of those first several weeks after Iowa, not only did he fall far behind in New Hampshire, but in all the southern primaries he fell almost two to one behind. If he had had to go to the New Hampshire primary 1 week after Iowa, after having lost Iowa to George Bush, if you look at the polls in that period, it is highly unlikely that he could have turned it around. My friend and colleague, Dick Worthland, who was President Reagan's pollster, said to me it took them the entire month to be able politically to refocus the debate, which is, in fact, the important part of what the process is about.

So I tell you that this system is not simply a matter of playing games or gimmicks but is very, very serious. I think the scenarios of what we're facing under a national primary are significant. I think it may turn out for both parties to be a blessing, that they may find an early nominee who is, in fact, their best candidate, decided by March, allowing them to prepare for a general election 9 months instead of 3 months ahead of the general election. It might not please most people in the country to have a 9 month general election campaign, but it might be efficacious for that particular party.

However, I think more likely are the set of consequences that are negative. Whether we have, in fact, on the one hand, such a split vote, if 60 to 70 percent of the delegates are chosen in the month of March and they are split between several candidates, we could have a stymied situation that is unresolvable to the convention, a spectacle that I think could be not very efficacious for that political party.

Second, and more importantly, this system opens itself up to an ideological candidate of an extreme, of one extreme or another. In a plurality, where most of these delegates are won now in systems in the Democratic party with bonus delegates and winner-take-more systems, if there are five, six, or seven candidates and you win a plurality of the vote, you can win almost all of the delegates. If that system operates from the very beginning and you have six mainstream candidates, and you have one extreme candidate who has a strong but minority viewpoint, that person could, in fact, come very close to accumulating the delegates they need before the race went down to a situation where you had a mainstream person who would defeat that person in a head-to-head contest. That person could come close to securing the nomination. We have in some sense been playing Russian roulette and someday the chamber is going not going to come up empty.

I just want to take a moment to touch on two other things, which is how did all of this happen. It is not by accident. What has happened, particularly since the beginning of 1978 with the Winograd Commission, a commission that I served on and which I confess a certain guilt, that it was a commission made up essentially of certain operatives on behalf of political candidates, either at that time the incumbent President or people who perceived they would be his opponents. The rules were designed in a way to try to, in fact, help nudge the process along.

BEST COPY AVAILABLE

The earlier reform commissions had had to do with opening the process up essentially in the Democratic party. In 1978 we crossed the line and they became candidate-interest oriented, culminating in 1984 in a situation where essentially, as Chairman Manatt can testify, he was practically powerless due to the fact he had a commission made up of one-third of Senator Kennedy supporters, one-third of Vice President Mondale supporters, and essentially one-third of representatives of organized labor. They all had an agenda for having a process that would nominate someone quickly, someone well known.

Essentially, let's all be honest. As we said at the commission, the rules didn't get there by accident. They were essentially a process to fulfill agendas of self-interest. In 1985 the Democratic party had the Fairness Commission. It was not candidate-dominated, for the first time in a decade. However, it was self-selected by the members of the Democratic National Committee themselves. It ran under the banner of "Let's not make any changes", leaving in place a system that was already somewhat perverse, imposing on a party that has no candidate who has long-term national running experience. Essentially, in my opinion, it was wedding the worst system to the particular structure of its potential candidate field as we look at it now.

All of this happened because people were trying to jimmy the rules in 1978—as I said, I plead some guilt to that—to jimmy the rules in their own interest, which there is nothing wrong with self-interest in politics, but any kind of excessive expression, whether it's in the governmental area or the political area, can become dangerous, and that is what has happened.

There are five principles I would like to state, because I think in the end, if you're going to effect or look at the process, it needs to be done from a body of principles. It is the incremental changes that are done that in vacuums look good, but, in fact, cause most of the problems. I think if there were a body of principles from which one group could operate in trying to meet this set of standards, it would be helpful in designing a nomination system. Just for the purposes that I could offer, let me just say there are five, and I will simply state them very quickly:

The first principle is that the people are sovereign. This is a country in which communications, through television and through news, is instantaneous. The American people pay, as I think Dick Scammon can testify, an enormous amount of attention to presidential selection as the most important vote people make. It is a decision where they do not need the help of party leaders or interest group leaders and others to help them make a good decision. Given the opportunity, they will make a decision. In my opinion, in the end, the system must be that this is a democracy, particularly as it relates to the Democratic party, and that people should be sovereign in this.

Second, that the process be open, fair and timely. That was the great issue after 1968 and it was the goal of the first reforms of the Democratic party, and they essentially were met. However, we still have atrocities in the system such as what takes place in the State of Texas. In the State of Texas, if you want to vote for President, to be counted in terms of the selection of the President, you must go

BEST COPY AVAILABLE

down on Saturday during the day and vote in the presidential primary, have your card stamped, and then you have to show up exactly at 7 o'clock in some obscure place to participate in a caucus to then also really cast a vote for the person you want to be President. It is a system designed to, in fact, disenfranchise the voters themselves.

We have a system in the State of Michigan, which has had several systems in the last several years, in 1980 they had a system where you had to pay to become a member of the party. So in a State with about 11 million people, only about 30-some thousand were able to participate in that system to choose an inordinate number of delegates to the Democratic Convention. Now Michigan has what we call, along with Missouri and several other States, a "firehouse" primary. It is the only electoral system in America where you show up—it is not a caucus—you show up at a primary system, you go in the door—some of these were held in union shops under the guise of either the union leadership or political leadership or what have you. In 1984 you went in and there was a box that said Mondale and Hart. You took your ballot and you checked it, marked it, you went in and put it in either the Hart or the Mondale box, in full view of whoever happened to want to register how you were voting. It is a system that is much more akin to the system we see in Eastern European countries rather than in the United States. And it also works against democracy.

Mr. SCAMMON. You declare your own public choice.

Mr. CADDELL. That's right, but it is done in a caucus system, as opposed to what is sort of a half-primary system. The caucuses are also done by accumulating percentages in order to get to thresholds for election of actual delegates.

The third point I would make is you address the question of the whole process nonincrementally. The process should be evolutionary. It should not be a static process, where the thing that happens on the first day is also the thing that happens on the last day.

It seems to me there are three natural divisions that should emerge in trying to find a nominee for President. First, the first stage should be the stage that allows candidates to emerge, particularly unknown candidates who may be underfunded but who, in fact, may be unknown but represent a greater truth in the society. Second, a process in the middle where we begin to winnow down candidates to those serious contenders, and a third part of the process that allows the real winner to consolidate his winnings and bring a concensus to his party and, therefore, to the political system.

The fourth principle I would argue is allowing winners to win. Presently, the Democratic party got in some of its problems because it established proportional representation, which I think makes some sense early in the system, but what it did was impose a political unreality, if you will, in the United States.

To give you an example, if you and I were candidates, Mr. Chairman, in the State of Pennsylvania, and it became the decisive primary, as it was in many ways in 1976 and 1980, and you defeated me 55 percent to 45 percent, after a 3-week campaign and spending several million dollars, that would be considered, as politicians we know, a significant and major victor. To then take, however, the

BEST COPY AVAILABLE

200 delegates and give you 55 percent of them and me 45 percent does not reflect the reality of the size of that political victory, and to impose a PR system through the system would be disastrous. Winners should be allowed to consolidate in real terms their political winnings.

The fifth and final point I would make on this is that the principle that matters in all of this is Lincoln's admonition that "one man and the truth makes the majority", that we have a system where one person, man or woman, who believes that they speak the truth, have a forum in which to go and meet voters, whether they are underfunded and unknown, to bring that message and have a chance to emerge.

The argument against Iowa and New Hampshire should not be over the question of should there be an early State or not. There has to be arenas for unknown candidates. However, the argument should be why should they be determinative. In fact, in trying to deal with the issue of their undue influence, we make them only more and more influential, as I indicated earlier. But the fact of the matter is there must be a place where an unknown person who feels they have the truth can emerge.

Presidential politics are about the future; they're not about the past. If you look at the conventional political wisdom and the fall of every prior election year in 1959 and onwards, the year before the presidential election year began, you would find that in almost every year the conventional wisdom proved wrong about what would happen in the presidential system. Not because the people who were making the conventional wisdom were not wise; not because they were not informed students of politics. It is, as I have come to understand, the fact that it is at the presidential arena that the American people speak about where they want the country to go in the future. A process that stifles that harms, it seems to me, the process of progress and movement in our politics in our country.

On this "one man and the truth" thing, my greatest objection to the timing bill, the House bill which actually was going to impose the window, all it invites is, if you are going to pass that, you might as well pass a national primary law, because that's what you have. Therefore, I think that principle has to be observed.

My final point, Mr. Chairman, is I don't believe this should simply be an exercise in discussion over this matter and wait until 1992 to see the possible consequences. We already know. We have been through this before. It is very clear how this works. In 1984 Walter Mondale, who was the choice of many of the leadership of the Democratic Party, much of it institutional leadership and much of it public, came within 2,000 votes in Georgia, on Super Tuesday—because we found a "jujitsu" in the rules—of being knocked out of the Presidential contest entirely, who was going to withdraw if he had lost Georgia, which he narrowly won by a few thousand votes.

That kind of system I think is not the kind of system we should have. I think we don't have to wait until 1992 to live with the consequences that are built into this. The need for some fairly simple legislation that would give some balance to this is needed now. I think there is a growing recognition among politicians and people

BEST COPY AVAILABLE

in the media and others that there's a real serious problem now. I think a great service could be rendered in dealing with it before we get to 1988.

Thank you.

Mr. SWIFT. Thank you very much. I have a number of questions. I think what we may do, Bill, if it's all right with you, is I'll go a little while and then you and then maybe do a second round.

One of the arguments that New Hampshire makes—and you have alluded to the phenomenon, both of you, in your testimony—is that it provides an opportunity for otherwise unknown candidates to be able to emerge. But the history of that New Hampshire primary is strange. Prior to 1972, the New Hampshire primary was on the second Tuesday in March, which is the very day that H.R. 1380 would return it to. But in 1972, Florida moved its primary to the second Tuesday in March, so New Hampshire moved its primary to the first Tuesday in March.

In the next Presidential election in 1976, Massachusetts and Vermont scheduled their primaries for the first Tuesday in March and New Hampshire promptly moved its to the fourth Tuesday in February.

This year, South Dakota has scheduled its primary on the fourth Tuesday in February, and one presumes, given New Hampshire's State law, they will now have to move their primary to the third Tuesday in February. New Hampshire once again arrogates to itself the right to be first.

It is hard for me to believe that the citizens of New Hampshire are so terribly concerned about the principle that there's got to be a place for unknown candidates to emerge, that it's willing to discomfort itself and move its election earlier each year each time somebody chooses to have it at the same time.

The question I am asking is, is there any evidence, in your judgment, that the manifestations I have just described in New Hampshire, or these other States that are going early, are predicated essentially on what is good for a national nominating process, or do they have some rather more parochial views and motivations that cause this phenomenon?

Mr. CADDELL. Well, Mr. Chairman, I think sometimes parochial interests can serve larger interests as well. There is always the irony of that in the human experience. I think that New Hampshire views itself as a State that established this process and has very strong feelings about being first.

I think it is no coincidence, by the way. I have this terrible argument inside my own party about how representative New Hampshire is. No one who has lost the New Hampshire primary has ever been elected President of the United States since it has been instituted. Now, that may be all coincidence, but it may speak to something else.

In my own party I have made the case about New Hampshire, that even though it does not contain minorities in the numbers you would find nationally, and because, in fact, its Democrats are relatively more conservative in primary voting than are Democrats in some other States, that if you look at the attitudes over time in New Hampshire and compare them—the attitudes on issues, ideas,

BEST COPY AVAILABLE

problems, what have you—with the attitudes of the party at large, the Democrats at large, you will find they come very, very close.

The second point with New Hampshire is—and I think Dick may have some feelings about this—I find that the people in New Hampshire take this very seriously. This is not a game on their part; it is not a process of "let's see how we can be disruptive in the process." The voters in that State, from the surveys I have done over the four Presidential campaigns that I have worked, take a very serious view of this. They study the candidates, they study the issues, in a way, frankly, that I will tell you I have seen in no other State. They know more about the candidates in the beginning of the process, in terms of measuring the amount of knowledge or feelings or information, than you often find in States at the end of the process.

I think it's a relevant argument. I think New Hampshire has been there, has set a precedent, it has reason to be there, I think people treat it seriously, and as I have always said, you've got to start someplace. I would just as soon start there.

New Hampshire is going to constantly be driven by the calendar. The Democrats came to a conclusion in the last commission and in this commission that it is a futile exercise to attempt to force them inside a window.

Mr. SCAMMON. I would agree with what Pat has said. Again, parochial, yes. But is there a Member of the House who, if he ignored the parochial interests of his own congressional district, would be sure of coming back next November? Parochial interests, taken collectively, are the interests of the whole Republic. The interests of a given State, parochial as they may be, are as Pat has said, reflected nationally.

Of course, there is a money question involved. Owning a farm in New Hampshire and paying taxes on it, I find that my fellow taxpayers have a certain enthusiasm for the green that is brought in by Pat and myself and many, many others who go there. But I don't think that is the main thing. I don't think that would do it alone. Of course, it's parochial, but after all, that's America.

Mr. SWIFT. If I heard Mr. Caddell right, you do believe something is wrong with the primary system and something needs to be done, right?

Mr. CADDELL. Absolutely.

Mr. SWIFT. The fact that New Hampshire goes first doesn't particularly bother you; that you don't see as central to what the problem is?

Mr. CADDELL. No, sir. I think the problem has been not with New Hampshire going first but other States trying to figure out how to counteract or cash in on this, and doing it in a backward fashion, frankly.

Mr. SWIFT. I have heard you both kind of defend New Hampshire, but now you're saying none of the other 49 ought to do that. Now, come on.

Mr. SCAMMON. I wouldn't say that, Mr. Chairman. Frankly, I would just leave it alone, I would respond with Dean Atchison's comments once to President Truman. "Have you ever thought, Mr. President, of doing nothing." Would this be anarchistic? Of course,

BEST COPY AVAILABLE

it would. But I have no guarantee that anything done federally might not be equally anarchistic.

Mr. CADDELL. The one thing I would point out is it's a little bit like getting someone off a merry-go-round. If it is running at full speed, jumping off is not the best way to get off. Unfortunately, that's what we have, a full speed merry-go-round. The reason the window was originally established by the Winograd Commission was in response to the clear situation that was becoming evident, that there were 17 or 18 State legislatures which were planning to pass bills that would put their primaries or caucuses on the same day as New Hampshire, which would have, in effect, created a de facto national primary, which is the reason the window was established.

Initially, everyone in the commission understood that New Hampshire was going to get an exemption, given its State law and its Republican affiliations and so forth, that it was not going to be outside the window. But the window was established, in fact, to keep from happening what you're pointing to, Mr. Chairman, which is that right now you try to stop the merry-go-round and jump off and you will have 49 States on the first day, all of which arguing they should be the first, in which case let's just go to a national primary. But at least let's not have it in March. We can have it in May and save everyone an enormous amount of frustration and time covering it.

The New Hampshire situation is not about New Hampshire. It is a question of, as I said, are you going to preserve a place where somebody can go and make a case. New Hampshire has a traditional lock on that situation and they're not going to yield it except by force, which I think would be unhealthy. The real question is not to let New Hampshire be determinative. The argument is, the problem people have with New Hampshire is, if you win New Hampshire you get nominated. Well, then, the question is, it seems to me, to have a system where that doesn't take place, that New Hampshire's momentum doesn't extend so—the momentum out of New Hampshire lasts generally, if you track it as I have in Presidential campaigns, over a course of 2 or 3 weeks. If you have the bulk of the delegates being chosen, if you have 80 percent of the delegates being chosen a month after New Hampshire, it is not going to have the same influence as if you have 70 percent of the delegates being chosen within 2 or 3 weeks of New Hampshire. That's why I am saying that people, in chasing New Hampshire and Iowa, are in fact chasing their own tail.

Mr. SWIFT. I understand the point that you have made, that if you just set a window and do nothing else, the greatest likelihood is everybody will pile on the front end of that window and you've got a de facto national primary. You don't like that, for reasons that I understand.

Now, how do you prevent that from happening? Within the context of a window, any of the bills that we have before us that approach it in different ways, or any suggestions you have—how do you meet the five principles that you aimed at, which seemed very reasonable, in some process that we could deal with legislatively? Or should we, as Mr. Scammon suggests, just close this hearing, go away, and hope it works out for itself?

BEST COPY AVAILABLE

Mr. CADDELL. Let me just say I think you have two possible solutions, neither of which I'm that enthused about, and then I will give you what I think is a way to reflect these five principles which were offered, in fact, not just by myself but a number of my operative colleagues in the Democratic party. It actually had some interest in the Fairness Commission before it was summarily dismissed by the leadership of the party.

The first option you have, which would be a very simple thing, is simply to freeze the system. I mean, the 1984 system was bad, but it will not be as bad as what we are about to face, in my opinion. You could simply legislate where no State could move up further than where it was in the system in 1984, and then really study the question about how to address this. That is the most simple solution, one which the Democratic party could have done itself and I think may rue the day it did not.

Second is to have sort of a window to deal with the Iowa and New Hampshire problem as it is going to exist, and then to set inside a window a series of dates. I don't like regional primaries because of the fact who decides which whole region is more important than the next, but perhaps by time zones or by option that allows States to have it on set dates at the beginning of every month so that you really got a discourse and a dialog going on and where people are able to judge the candidates over a course of a campaign, testing their metal, the seriousness of their positions, and the depth of their character, something that the evolutionary process should do.

Mr. SWIFT. I understand the point you're making about setting dates on which a State could opt——

Mr. CADDELL. Right, or establish it by time zone. You could do that.

Mr. SWIFT. How do you stop the front loading if you give the States the right to pick the date, or is that not what you're proposing?

Mr. CADDELL. You could do that. I'm saying you would still have a front-loaded situation. I would prefer to argue it by times.

The real solution I would like to suggest is one that I thought was actually a consensus idea by about 15 or 20 of the operatives in the Democratic Party, who have been on opposite sides in every issue politically in campaigns over the years, who in concern prior to the Fairness Commission sat down and said "what is the most simple change that could be made, that would provide balance and fairness to the process?" And since the people at this stage were not candidate driven, we came to a relatively interesting consensus, which was the following:

In a balanced system you would see it as a tripartite system—actually, it would be four parts. You would leave Iowa and New Hampshire outside the window, which they would be, but inside the window you would have a tripartite process. What you would do is give the States the option—and this is where I agree with Dick—let the States decide their option. But here's what the option would be: If you went early, you would have to give a portion of your delegates in a more straight proportional way, so that the amount of impact you could deliver would be less, and the later you went in the system—if you decide to forego the early expo-

BEST COPY AVAILABLE

sure—you would be able to, through either bonus systems or winner-take-all systems, to deliver more impact later in the process and help to allow the party to come to a consensus.

The tripartite system was thought to be this way, which is the first third of the system to be a straight proportional representation process, allow candidates through the emergence process, let candidates emerge, but ensure that they can't get such a delegate lead that they can lock up the process before they are seriously tested and before a consensus in the party can be drawn.

The second stage of the process is to be the winnowing down process, where States would be able to provide more delegates to the winner, either through bonus systems or winner-take-more systems. They would be able to deliver a greater number of delegates to the winner, making it more attractive for middle-sized and bigger States to hold back from early exposure.

The final part of the process, the third part, is what we call the party consensus process, consolidating and pulling the party together, which is to allow States to have not only winner-take-more but go back to potentially winner-take-all systems, so that those States would be very powerful in terms of the delegates they delivered and would help end the process and allow a winner to consolidate his win and bring the party together, therefore having a system that was evolutionary, that allowed candidates to emerge but not assure them a nomination, allowed the big States, for instance, to deliver enormous impacts, but kept them from being too early in the process, to give them incentives.

Under that system it was very simple. The States could then make their own decision, the incentives would be there for them, and they could make a decision in their own best interest of when they wanted to be in the process. I felt, and I think others felt, that was a fairly simple and balanced way to do it, just simply tie how much power you can deliver to when you decide to go on the calendar.

Mr. SWIFT. That's a very interesting proposal.

In leaving New Hampshire and Iowa outside the system, I presume you're saying just recognize the reality of it and stop worrying about it.

Mr. CADDELL. Absolutely.

Mr. SWIFT. Would you do anything to see that there was more proportionality to them because they would come earlier in——

Mr. CADDELL. Absolutely. They would be straight proportional. I mean, the key to stopping New Hampshire and Iowa from being determinative is to keep their momentum period from being covering States with where you can accumulate a majority of the delegates. So they would be straight proportional States themselves. Frankly, if it were left to New Hampshire, they wouldn't care if they elected any delegates in that manner, to be honest about it. So yes, they would be straight proportional.

Mr. SWIFT. The gentleman from Minnesota.

Mr. FRENZEL. Thank you.

The suggestion that Mr. Caddell made, which was the consensus of this group, is, of course, contrary to the rules of the Republicans. I assume the Democrat Fairness Commission is an oxymoron in itself, so that probably was not even considered.

BEST COPY AVAILABLE

Pat, isn't that what a lot of people would call a social tinkering race to sort out the ultimate spectacle, giving different values for different times that you hold conventions? Wouldn't you get laughed out of town on that by most people?

Mr. CADDELL. When it was proposed no one laughed, I assure you of that, sir. I don't think so.

Mr. FRENZEL. But you were with guys like us, who meddle in it every day.

Mr. CADDELL. Well, I think the perspective comes from how serious it is. I mean, the operatives involved were all fairly serious about this. There are different values in the system. If you believe as I do, being a free market person—and I've always been a follower of a Anthony Downs' economic theory of democracy, which is that people ultimately will act in their self-interest—and democracy, in a sense, can be equated in economic terms to some extent—why should California not be on the first day if you have a system that says, as it does now, that you can provide almost everything up to winner-take-all systems in delivering delegates, and you can choose to be any day in the process. If you wish to be decisive, and you believe that the system will be decided early, you would do as Speaker Brown has indicated California is likely to do, you would head right to the front of the calendar.

It seems to me that the process to be served here is just that, a process, an evolutionary process, one in which you have a chance for the public to judge candidates, to view them, to say "I'd like to consider these three people", to pass on that choice, to say let's examine them more thoroughly, and finally, in the end, let's make a resolution.

I don't think that that's very silly. I think that is, frankly, fairly logical.

As I said, Congressman, I never thought I would ever come here and advocate that the Congress do something about this. I only come because my party has abdicated its responsibility in at least assuring some system that is something less than the Russian roulette of a national primary.

Mr. FRENZEL. So your choice for now is to freeze everything in place and then work on a system such as you have described?

Mr. CADDELL. Or any—All I'm saying, Congressman, is that I have watched what happens when well-intentioned people start doing reforms. We all saw that in political financing. I think the members of my party, when they passed as the majority party the financial reforms after Watergate, never expected to see what happened to the structure of campaign financing that took place after those "reforms". As politicians should be most concerned about their own survival, you would think they would have thought that through more carefully, or would have had a chance to have a greater understanding of it.

Any danger with reforming or tinkering is that it will produce unintended consequences that are worse than what you have. I am not saying pass this plan that I and others suggested or whatever. I am saying study the system as a whole, not an incremental change that causes impacts, unintended or unplanned. I only offered the freeze, as a practical politician, as simply the most practical

BEST COPY AVAILABLE

answer at the moment to keeping the system from becoming a de facto or really national primary.

If we have 25 States, as we are likely to have, as Chairman Manatt said, now having their contests within the first 3 weeks, and you have 60 or 70 percent of the delegates being chosen, it's a national primary. It's pure and simple. It just takes more than one day. I think most people think anything is better than that system. I would settle for a freeze, as inadequate as I think the 1984 calendar was. I'm just trying to be practical about it.

Mr. FRENZEL. Thank you.

Dick, your suggestion is that we leave it alone?

Mr. SCAMMON. Basically accepting what Pat has said about the law of unintended consequences, and remembering back to the melancholy spectacle of the DNC operating, with all good intentions, over a period of years, year after year after year, I would say leave it to the States and to the parties in the States. Remember that most of these presidential primaries—not all, but most—are simply originally tack-ons to the State primaries.

For example, Illinois, California, Ohio, Pennsylvania, these were not originally meant as a great contest in themselves. That was the day you were choosing candidates for Congress, Senator and Governor, so why not, let them have a chance to say who they want for President.

Particularly this development came before the broad use of public opinion polls. Under these conditions—I really must say its a very ingenuous scheme, Pat. I must really say the idea that this would work on a very simplistic, know-the-answer solution, I think is probably wrong. I can't guarantee it's wrong. It is probably as wrong as the French system of trying to combine presidential and parliamentary government, which is now going to what is pleasantly called cohabitation.

Under these circumstances, I would suggest, you try to leave it as much alone as you could, knowing that anybody can destroy any system you put in by holding the primaries in 1987, and even as Michigan is doing now, in 1986, by not calling them primaries. In other words, you can't go to Michigan and say you cannot elect precinct committeemen in 1986, or say you won't allow those precinct committeemen elected in 1986 the right to choose delegates through the usual escalation of county, congressional district, and so on. I think that would really be extending the Federal authority into the State in an unconscionable way.

And since anybody who really wants to get ahead of the game can get ahead ala Michigan, no matter what New Hampshire wants to do—I suppose New Hampshire could move it into the summer of 1986 if they wanted to, but I doubt that they would—I just believe that these are so basically uncontrollable that they are really not a proper subject of extensive Federal legislation, beyond protecting the right of the citizen to vote in the first place.

Mr. FRENZEL. OK. Do you believe as Pat seems to, that left alone, more and more States will opt into the earliest possible timeframe, some will skim over into the next year, and that we will be making decisions a good deal earlier than is now the case?

Mr. SCAMMON. Well, I can't see this becoming a national primary because, if you move it up to 1986, as the Michigan people have

BEST COPY AVAILABLE

done, I don't think you're going to do extensively in all 48 States a national primary in the summer of 1986. I do think there are other inhibitions upon moving it so far ahead of the fact.

They might do that. They might move it into 1986 or 1987, or the comparable years in later ones. I just don't think you know. I think you have just got to see what happens.

Mr. FRENZEL. Do you believe it's likely, as Pat suggests, that California and others will move up to the New Hampshire date?

Mr. SCAMMON. They might, I suppose. The whole move in the South is really not basically to make money out of having early primaries. It's an ideological move, because many of the Southern Democrats feel they've had a rather short shrift in the national party and they feel if they can get in early, particularly if they can unite behind a single candidate, which remains the primary obstacle to their purpose, they might do it.

Mr. FRENZEL. We Republicans think that will be the best thing since they reformed financing. [Laughter.]

Mr. CADDELL. I know. Could I just add on to what Dick was saying, which is about the 1986 problem in Michigan, which I frankly think everyone—even the people in Michigan now think its a little strange, now that most people think it's bizarre. That is, there's a prohibition in the rules today because of the 1968 situation, where delegates in the Democratic Party were effectively elected 2 and 3 years prior to the year of the election. There is a prohibition in the Democratic Party rules that will not allow a contest to be held other than in the calendar year of the presidential election, which is why most States can't move to 1986 or 1987.

Mr. SCAMMON. But they wouldn't have to. You select some of the delegates, but you don't continue the delegate-selecting process at the county and congressional district and State level until you get into——

Mr. CADDELL. But the Democrats would ban even caucuses. But the Democrats are not having a Michigan process for that reason.

Mr. SCAMMON. That's true.

Mr. CADDELL. I'm just saying that the rules are such that in moving primaries it is very hard to—the primaries themselves might have some caucuses that way, but you certainly couldn't have the primaries.

I would point out I'm amused by the southern primary idea, because I don't think the people who—I understand the ideological impetus. As I said, it runs a little bit against the grain of history. But it also whacks of a kind of analysis of the way those States react, or the composition of those States in primary voting and presidential campaigns, and I can understand your enthusiasm, Congressman Frenzel, for the Democrats doing that.

It reminds me of Reverend Jackson's comments the other day, when questioned at the Rainbow Coalition about why he was enthusiastic about the southern regional primary. He said he was enthusiastic because the South had been ignored for too long, and then went on in this vein for a while. Finally someone asked him what he felt the conservatives—since he and the conservatives were in the same bed, so to speak, in the South—what the conservatives were going to learn in 1988, and he said "How to count." That is, I think, a prophetic statement.

BEST COPY AVAILABLE

Mr. FRENZEL. Thank you.

Mr. Chairman, I yield back the balance of my time.

Mr. SWIFT. I thank the gentleman from Minnesota.

The gentleman from California.

Mr. PANETTA. Thank you very much, Mr. Chairman.

The basic problem here that is always raised is that somehow the candidates for the presidency are not getting as fair shot at the nomination by virtue of juggling these dates around, and that somehow we lose the potential of certain candidates as a consequence.

I guess, first of all, is that the problem, and secondly, no matter how you structure it, would it have made a difference, for example, 2 years ago in terms of who got nominated by either the Republicans or Democrats?

Mr. SCAMMON. I doubt really that—As long as you have the public opinion polls, which for many county and State chairmen will be just as effective as the primary results—because they involve, theoretically at least, a sample of an even better public expression than the primary voters—as long as you have these alternate sources of opinion, I am just not sure any institutional change, whether it is mine alone, whether it's Pat's, to get a tripartite system, no matter what, or even a national primary, although that would perhaps have the most dramatic effect of any, I doubt very much if this would change very much.

If you've got something to say and you make a good candidate, sure, you'll probably get a hearing.

Mr. CADDELL. Let me just say, Congressman, I'm not so much worried about the candidates being disserved as I am the American people, the country. After all, this is not tiddlywinks we're discussing. We're discussing the leadership of the Free World, the President of the United States. I have a real concern, frankly, in what has now become chaos at a massive level.

I am concerned about the candidates being served in terms of being able to get a hearing for their messages and their beliefs. I am concerned by a process in which the American people are not given the opportunity to have the time to apply the kind of collective wisdom and judgment that they have brought, in my experience of 15 years, to the presidential system, even when they have rendered results I have not wanted or agreed with. In my analysis of public opinion, I can understand the logic, the rationale, and admire the collective wisdom in how judgments are reached by the American people. I am concerned about denying them that opportunity.

I think it is not a question of speculation. The reality is at hand. We had 15 or 16 contests in early 1984, and when you ask would things be different, I pointed out earlier that in 1984, but for several thousand votes in Georgia, Walter Mondale would have withdrawn from the presidential campaign 2 weeks after the process began. He would have felt it was over for him. Even though I was on the other side, I hardly think that's as rational or fair system, to have him knocked out by a candidate before they can then be judged again in another arena.

I go back to the other point I made. Let someone challenge. Take the system as it now exists, or as it will exist in 1988, reapply it to

BEST COPY AVAILABLE

1980, and tell me how the country would be served if Ronald Reagan were denied the nomination which right on black and white paper would have been the case.

Mr. PANETTA. I guess the concern I have, which was mentioned by Dick, is interfering with the free flow of politics. No matter how you structure a system, aren't there always going to be the judgments made as to how you play one issue against the other, how you play one election against the other? You know, even under any system that's structured, a presidential candidate may very well decide that he hasn't got a chance, for whatever reason.

I guess, as long as you have a system that's out there, candidates who decide they're going to run for President will have to make the decision they're going to go after it. That is part of the test, I think, that the American people want candidates to face, whether those candidates have the capability, no matter how the situation is structured, to be able to make their way through it. That is part of the test of whether candidates are worthy of the job.

Now, admittedly, it gets chaotic and, admittedly, it gets crazy. But, on the other hand, that's the name of the game. I guess the question is, how do you, in trying to insert a degree of sane stability to the process, really change the basic politics?

Mr. CADDELL. Obviously, Congressman, people will always run. As I said at the conclusion of the Hunt Commission meeting, I got up and I said—I didn't mean to sound so arrogant to this group of people—but I said, "I know how this works, and it's not going to work the way you think it will." I think that came to be fairly prophetic. I understood how to play these rules. This is a game where you give me the rules and I'll tell you how to play. I mean, that's what people hire me to do. I'm telling you, that's my business.

But I want to tell you something. When you have a system that is as arbitrary or capricious, or potentially arbitrary and capricious, as this system is, it isn't the candidates who are going to be hurt by that system, if that misfortune falls that it be capricious or arbitrary; it is the country at large and the citizenry at large. The candidates can adapt themselves to any system, it seems to me. You're right, it is one of the tests. There is nothing wrong with having a system that has some logic.

I am against overregulating the system. What I tried to suggest in this proposal that I made was to at least provide just a framework of logic to it that allowed an evolutionary process and let the States do what they want. I mean, understasnding what the tradeoffs were, let them make the decisions as to what is in their best interests and what they wanted to do. I'll guarantee you, it wouldn't be a tidy process, but at least it would have a degree of evolution and rationality to it that I'm afraid we all fear is lacking.

I mean, you came back to the final point. It isn't a question of we're facing an alternative between various degrees of intricacy and chaos. What we are facing is we're going to have, for all intents and purposes, a national primary. It may turn out, as I said in the beginning of my statement, to be good; both parties or one party may benefit by getting the right candidate nominated early and prepared early. But it has a lot of other consequences that most people who have studied the system all agree would hurt the

BEST COPY AVAILABLE

country in terms of having national primaries. That's what we ought to be addressing.

It is not mere idle speculation. That is what one of the major leaders of the Democratic party said to me at the conclusion of the Fairness Commission, "Oh, those Southern States won't really do that."

Mr. PANETTA. Thank you.

Mr. SWIFT. The other gentleman from California.

Mr. THOMAS. Thank you very much, Mr. Chairman.

I'm sorry I wasn't here for the statement, because I left earlier indicating that my concern was that we focus too narrowly on the business of candidates and the competition and we forget that the primaries affect the national party convention, which is still the device that selects the presidential nominee, and that by fooling with the primary system we may very well affect fundamental changes in the national party convention to the extent of doing away with it, et cetera.

I am beginning to understand, Mr. Caddell, what your point was. But my difficulty is, if you're going to set up a procedure, as I think I understand you have outlined, that is extremely complicated in terms of imposing weighted priorities, however chosen by the States, the structure itself I think would be extremely difficult to get passed.

You just indicated to Mr. Panetta that you wanted to leave it up to the States. Well, what do you do with a State like California, which would fall near the end of that procedure as a winner-take-all State for Republicans, but by State law the Democrats have set up a different structure in California than the Republicans for selecting. The only thing that is the same is the time at which it occurs.

Wouldn't it be better to leave it up to the parties to allocate this procedure of weighting, rather than the States?

Mr. CADDELL. Congressman, as I said—I know you were at another hearing that took you away. I said at the beginning of my statement that I never believed I would be sitting here advocating somebody passing congressional legislation. I am saying it because my party abdicated its own responsibility to the party at large and to the citizenry of this country in not doing that. I think the parties ought to decide their own systems inside the timing question.

The truth of the matter is the Republican Party—you know, you all have been the caboose on the train. We changed the rules and 90 percent, in effect, of the Republican party as well, except for the question of how you apportion your delegates. But for the most part, in 9 times out of 10 cases, you get the same game that that we decided to impose. I wondered why it took you all so long to—You know, I would have raised my voice long ago about what we were doing to that.

But the truth of the matter is, I agree with you they should. I was asked what I thought the best solution was. I think it ought to be a party solution in that sense. But, failing that, I think something has to be done. As I said earlier, I'm a practical person and I'm willing to—I think a freeze is the most practical answer at this point, and then to study the question. But given my druthers, I would rather have a system that offered the American people of

BEST COPY AVAILABLE

both parties and all parties overall some degree of rationality than one that is, as I said, playing Russian roulette with more than one chamber filled.

Mr. THOMAS. I agree with you to an extent. My problem falls back on this business of setting up a system which will remove the capriciousness and arbitrariness. I agree with you on a number of points that you make. With the gentleman from California's comments about you're supposed to have to survive this contest, I don't necessarily agree with that. But if you start structuring the rules so that you remove the "capriciousness" and that you make sure the best candidates have an opportunity for survival, then you're trying to determine what qualities a candidate has that are best. I think you've got circumstances in history in which a certain President who was a near greater or great would have failed in a different set of circumstances. Happenstance has placed certain Presidents in conditions which made them great.

I think you have to, to a degree, allow for a survival atmosphere, because it may, in fact, be the best judge of the mood of the country, rather than the particular qualities that a person might have.

Mr. CADDELL. Congressman, I couldn't agree more with you. I didn't want my remarks to be misinterpreted. I think you're absolutely right about the candidates. I totally agree with that. I want these people tested, and I want that survivability thing.

When I talked about being capricious and arbitrary, it was having a system where someone particularly starts off in a process and it is over—let me just put it this way. If you take a candidate, who is the right candidate for the Republican Party or Democratic Party, and this person has all the right attributes and all the right abilities, but suffers the disadvantage of not being well known, suffers the disadvantage of not having a lot of money initially, you put them into a national primary context and that person isn't going to emerge, in my opinion, no matter how good they are. It's the reality of the situation. All I'm saying is——

Mr. THOMAS. Look back 50 years ago, 100 years ago; that same profile on a candidate was not one that would be in the so-called springboard positions for the Presidency. It used to be that you had to be a Governor or a Senator. Now it is a little bit less so, as a matter of fact, because of the ability to have mass communications with relatively small amounts of money.

So it just seems to me, if you look back historically in terms of the handicaps that these best qualified people would have had—definitely the best person for the Presidency, he is just not well known, he doesn't occupy a position that leads to an automatic assumption that they would be a Presidential candidate, et cetera—those have always been liabilities.

Mr. CADDELL. But, Congressman, I believe in the system we have in terms of television and communication. If you're the best qualified, best candidate, and you have a system in place that gives you a chance to have exposure, I have full confidence in the American people, that the voters in each party and the American people will find that person. I think they will unerringly find the person that they want that represents their views or who they feel is that person.

BEST COPY AVAILABLE

Mr. THOMAS. But in any given time for a Presidential election period, that person has never run, if you push the argument about the quality aspect. First of all, you have got to want to be President, and then you have got to examine the milieu in which you decide you want to be President, and then you structure the operation accordingly.

Mr. SCAMMON. Mr. Chairman, if I may introduce a point, I think you could adopt Pat's scheme, you could adopt a national primary, you could leave it the way it is. Basically, the American people would make a correct decision because the majority would make it. It might be arbitrary, it might be capricious, all the good and bad words we can throw in on both sides of any given equation. It doesn't make that much difference. So my own suggestion has been to leave it the way it is, where the States and the parties collectively make these judgments.

I think a national primary might work. I don't know. Given the law of unintentioned circumstances, any system might or might not work better. We have one now that, while it works chaotically to those who lose, does not work chaotically to those who win. It's a pragmatic judgment and I think the people ought to be able to live with almost anything you do.

Mr. CADDELL. I don't disagree with that, Dick. I have had more success in winning with it than losing with it, quite frankly, in just the nomination process. But I'll tell you, in saying that, this system worries me. I mean, I'm not coming in here saying that somebody says I can't figure out how to make it work, or help my candidates or whatever. What I want to tell you is, if you're going to have a national primary, let's have one. Let's not stumble into one.

I will just tell you the political reality of what we're facing now. Iowa and New Hampshire, if one candidate—I would be willing, if it weren't against the law and we weren't here on the record, and if this were a friendly world, I would be willing to wager whatever amount of money and whatever odds you want, that if somebody wins Iowa and New Hampshire, they are the nominee of that party, right now. There won't be any calling back, whether that person is a good person, a bad person, or what have you, because the system is going to kick in. I will just tell you flat out.

Mr. THOMAS. One last question on that.

It seems to me that the system is always in transition. In the early twenties, when the primaries first came in, that faded. We have a situation now with the regional primary. What happens if, for example, Jesse Jackson wins the southern regional primary in 1988? Do you think in 1992 they're all going to coincide again or maybe restructure a little bit? What happens if California decides that it wants to move it up a little bit? I don't care if New Hampshire goes first. If California says the day after New Hampshire, California is going, and it's a winner-take-all primary, New Hampshire isn't important any more.

My concern is deciding that the system is so out of whack that we need to put a structure in which will be dictative of any relationships versus letting it flow a little while longer to see what happens. I think there is going to be some interactions there that will be self-correcting.

BEST COPY AVAILABLE

Mr. CADDELL. I'll tell you, we're letting it flow. Your wish will be granted. But I would say this on that point, sir. I agree with you. In 1968, the best system I have seen in scheduled primaries was the 1968 system. It was terrific. It had only one flaw, which is all the delegates were already chosen. The party would have been better off if the Democrats had simply said we're going to open it up and force timeliness in the sense of the choice of delegates and walked away and let the States do what they want. Life would have been much better

We have to deal with the reality that it didn't happen. Once you went down this tinkering road, this tampering road, what we have is a system that has not gotten here by accident. I made the remark in my statement that this system has been the result of essentially various factions of either candidates or interest groups, essentially designing the system and having the votes to design the system to serve their interest, or perceived to serve their interest. Sometimes it didn't work out that way. It wasn't happenstance that we got where we are.

Mr. THOMAS. Particularly one party.

Mr. CADDELL. I'm saying I agree with that, Congressman, and as I said, we've been the engine and you people have been the caboose in this process. But that's been happening in the Democratic Party. So we didn't get here by some process of accident. Believe me, it has been a series of a lot of different design defects and so forth, but they were at least for the last several times real design questions.

Let me just state the other point. Congressman, yes, if you put California the day after New Hampshire, you will make sure that New Hampshire is not important. I guarantee you that. But if you put a candidate out there—and I have worked in California on a lot of campaigns—who is unknown and with little resources, and you tell him that the first test is the State of California in this country, that candidate, I'm telling you, isn't going to win, even if he's the right person. There is no way, for anyone who has had experience in campaigning in California—I mean, that's like being in a nation all by itself.

Mr. THOMAS. Thank you very much. I do appreciate the thoughtful processes that this is going under, because for too long it has been individuals determining how they can game the system. I appreciate that.

Thank you, Mr. Chairman.

Mr. SWIFT. I thank the gentleman.

I would just like to pursue some specifics of your proposal. At what point would you freeze? Since they have come up with the southern primaries, for example, or before—

Mr. CADDELL. If you're going to freeze, you have got to freeze into the calendars that existed in 1984. Everybody had a chance to move in 1984, in 1983. The Democratic Party opened the door and if you wanted to go then, you could go. A lot of States moved. I simply would just not allow a State to move up beyond where it was in 1984. So if the States move, they've got to go back.

Mr. SWIFT. I understand then what you're proposing.

BEST COPY AVAILABLE

You have suggested that we provide the window and then take the tripart approach in Federal legislation, and that might be difficult to do, whether it's useful or not aside.

What would be the chances of us building the window in Federal legislation and leaving it to the parties, should they choose, to implement the tripartite proposal that you have?

Mr. CADDELL. That might work, Congressman, in the sense that you might do that. I think at the moment the Democratic Party's response would be fine. We have a window and we have, by law, exemptions to that window. That's what we're operating on now.

Mr. SWIFT. The point I'm getting at is the biggest perceived problem is that we're getting out of control in terms of when the whole process starts. The parties have demonstrated an inability to solve that problem. If the Federal Government, with or without your freeze, were to move in and say, "OK, we'll solve that; we'll set up the window"—recognizing the potential for that turning into a national primary, as you suggest—but then do nothing else at this point to deal with the major problem that's presented to us, that would in no way prevent either party, if it chose, from establishing the tripartite system (with the complication that a party alone doesn't determine when the primary will be in their state; they would have to work that out through their State legislature).

Mr. CADDELL. Well, the parties don't have the ability to force States to show up on a certain time. They can make prohibitions but they can't force you to move to certain——

Mr. SWIFT. But would not the parties have the authority to say delegates selected between these dates will be proportional——

Mr. CADDELL. Oh, sure, they could do that. But I'll tell you, Congressman, the problem I have with the system and the reality of today, if you close the window and lock it in, to lock in New Hampshire and Iowa, what you will do is have 30 or 40 States who will decide whose going to be the new New Hampshire. You will get a national primary. The evidence is overwhelming in front of us. It is how do you get off the merry-go-round slowly. I mean, how do you slow it so you don't break your neck when you jump. I have admiration for the fact that you're already tackling this issue. I think it's a terrific thing. I think it may yet be instrumental in maybe prodding the parties to do something.

But my problem with the closed window system is, it still does not assure—one of my key principal questions—what happens to a small State, "one man and the truth"? What happens to Lincoln's admonition?

Mr. SWIFT. I want to thank you both. You have been very enlightening and extremely helpful to the committee. Thank you.

Mr. CADDELL. Thank you, Mr. Chairman.

Mr. SCAMMON. Thank you.

Mr. SWIFT. Our next panel is Michael J. Robinson, professor, media analysis project, George Washington University, and Austin Ranney, who is resident scholar with the American Enterprise Institute. Thank you both for being with us and sharing your expertise.

We will begin with Professor Robinson. You may proceed as you choose.

BEST COPY AVAILABLE

TESTIMONY OF MICHAEL J. ROBINSON, PROFESSOR, MEDIA ANALYSIS PROJECT, GEORGE WASHINGTON UNIVERSITY

Professor ROBINSON. First let me apologize for sneezing and wheezing, which I will probably be doing during the course of my presentation.

For the past 6 years I have been the director of the media analysis project at George Washington University, but I have been studying media coverage of presidential primary politics since the 1972 Presidential election.

I would like to make three points, with a few subpoints, and then draw a few conclusions about the role and the consequences of the news media in presidential selection.

The first point is a qualifier. I think we ought not to be too deterministic, or as someone said, fatalistic, about our thoughts concerning the impact of the news media on presidential selection especially, or even in the primary process. If conventional wisdom were correct, we would not be seeing in 1984 what we did see. First, in 1984, although current thinking about the impact of the news media in the Presidential selection process would suggest that an incumbent President would have a great deal of difficulty getting a renonimation from his party, President Reagan was totally in control of the nomination for his party in 1984.

Second, in 1984 the "Mondale prediction" did not come true. And by the Mondale prediction I mean the one that Newsweek, CBS and the New York Times offered just before—in fact, right up until the New Hampshire primary itself took place. CBS and the New York Times, for example, the morning before the New Hampshire primary, said that Walter Mondale had the largest and perhaps the most insurmountable lead that any candidate had ever had in the history of national polling for pursuit of his nomination. Yet, within 48 hours, as we know, that prediction carried very little weight among the voters in the State of New Hampshire.

The second point I would like to make is that under some conditions news media, and news media organizations can be terribly consequential in what happens in Presidential selection. For example, in 1984 we have I think the vivid case of Gary Hart. Between week seven and week eight in 1984, Gary Hart's exposure on network evening news doubled. That was, of course, because he did reasonably well in the Iowa caucuses and then did shockingly well in the New Hampshire primary.

Between week eight and nine, which is to say the week following that increase in exposure, Gary Hart quadrupled his support for the nomination among Democrats nationwide. So there are conditions—and I think the Hart case will provide for us those conditions—under which news media "play", news media "spin", news media, if you will, "bias", will be consequential in influencing people's attitudes as to who the nominee ought to be.

The third thing I would like to say is I think we have at the media analysis project identified three things that the news media tend to do in covering the early campaign for the presidential nomination that allow the media to go beyond simple reality in their portrayal of the campaign and allow them to have some consequence for who the nominees will turn out to be.

BEST COPY AVAILABLE

What is it that we generally find the news media do? Well, three things. First, what I call "Surprise journalism." Surprise journalism is the tendency that we all recognize for the news media to sensationalize—to hype anyone who does better in a delegate selection process than he or she was potentially expected to do. A classic case here would be John Anderson's campaign in 1980. Although in the early phases of that campaign John Anderson did come in second in two primary States, he never won a primary State. Yet we find on CBS News in the month before those two second-place finishes, and in the month after, a comparison reveals that Anderson increased his coverage by a factor of four. That, I think, is a vivid example of "Surprise journalism."

The second thing that we find is "Early bird" journalism. What is early bird journalism? It is the tendency for the news media either to enjoy or to be forced to cover those things that come earliest during the course of the Presidential campaign. In 1980 we monitored all news seconds presented on CBS to each of the 50 States for their delegate selection process. Let me say that, with Iowa serving as the base, we can then compute how well each State did in 1980 on CBS evening news in attracting news attention per voter. Again, with Iowa serving as 100, because Iowa came first, I have taken the liberty to look at how well the States of the subcommittee members did in comparison.

Iowa received 15 times as much news attention per voter as Connecticut. For Kansas, we cannot determine the ratio because Kansas received no attention. North Carolina cannot be computed because North Carolina received no news attention on CBS in its delegate selection process. Nevada, also cannot be computed. California, 50 to 1. In other words, voters in the State of Iowa attracted 50 times as much news attention per voter as the voters in the State of California. Missouri cannot be computed; no attention. Washington State cannot be computed; no attention. Minnesota cannot be computed; no attention.

I think we know that Iowa and New Hampshire do benefit from "Early bird" journalism, and so do those who win in the early States.

The third thing to say is that the news media practice what we call compensatory journalism. Compensatory journalism is the tendency for the news media—and I think an increasing tendency for the news media—to try to take the wheels off the bandwagons that they themselves create in the early primaries. In 1984 we saw this to some degree, and I think perhaps to a dramatic degree, with Gary Hart.

Gary Hart, after all, did quite well in Iowa in terms of "Early bird journalism," and extremely well in New Hampshire, where he won and carried with him an enormous amount of news attention and vote with him. Yet, within the period between the New Hampshire primary and Super Tuesday, the news media spin about Gary Hart changed from reasonably positive to quite negative.

Hart was not the only person who suffered from "Compensatory journalism" in the 1984 campaign. To some degree, so did Jesse Jackson. Although he did not win any early primaries, he got an enormous amount of attention for some of his successes in the international arena in early 1984, bringing Mr. Goodman back

BEST COPY AVAILABLE

from Syria. Yet, after "Hymie-gate", we noticed that the press decided that Jackson's early advantages with the news media had to be treated more harshly for negative news about the candidate that followed after that incident.

We found the same thing happening with President Reagan in 1984 and in 1980. As he did better in the polls, his press tone on evening news became more negative. John Anderson and Ted Kennedy also revealed the same pattern. During the Presidential recruitment phase, and also during the general election, we find in 1980 and 1984 that as a candidate does better in the polls, or does better in terms of news media spin over the course of the early campaign, there is a point at which the journalists themselves decide it would be a good idea to show another side to this candidate. To some degree, Roger Mudd has come to represent "Compensatory journalism" perhaps better than any other network correspondent, what with his interview of Teddy Kennedy in 1980, and also his interview with Senator Hart around Super Tuesday time in 1984.

What conclusions would I draw about network news coverage and Presidential recruitment? First, nothing that we see that the networks do is irresponsible. Most of these practices are either historic—have alwasy been with us—or are understood in terms of the norms and pressure associated with journalism.

Second, to some degree the news media have, I think, perhaps improved their performance over the last several Presidential elections. In 1968 and 1972, for example, the news media did more than practice "Surprise journalism." They engaged in "Phantom victory," in which to some degree they did declare people who did not win primary or caucus elections to be the winners of those primary or caucus elections. Since 1976, however, the media have been more careful about making sure that they point to the fact that if Anderson does come in second, he was in second place, not "the winner" of the primary or caucus.

Third, there is some irony to what the news media do when they influence the Presidential recruitment process. That irony is that the last practice, "Compensatory journalism," tends to neutralize the impact or consequences of "Surprise journalism" or "Early-bird journalism." As I say, just as the news media practice norms that give us hyped victory or a greater tendency to cover Iowa or New Hampshire, they also themselves have now engaged in a practice which makes them tougher on the people who seem to benefit from those two practices that occur earlier in the campaign.

It could be that this tendency for compensatory journalism to work against, to corrode, or to undermine "Surprise journalism" and "Early-bird journalism," may mean that the media in the long run will play less consequential role in Presidential recruitment than they have over the last decade or two.

The fourth point I would like to make, in conclusion, is that clearly these effects or consequences are subject to control. By that I don't mean congressional action against the content or performance of the media but, of course, things such as the regional primary which will reduce the consequences of practices such as "Surprise" or "Early-bird journalism."

BEST COPY AVAILABLE

The last thing I would like to say is that I tend to agree with Dr. Scammon, that although the situation clearly has problems as it currently exists, and although regional primaries I think, as an institutional change, will tend to work against some of these consequences caused by the news media, there is much to be said for this system, or at least to allow the system to play itself out in 1988, and then to take another look at regional primaries or even a national primary day in 1992.

Thank you.

BEST COPY AVAILABLE

STATEMENT OF MICHAEL J. ROBINSON, PROFESSOR, MEDIA ANALYSIS PROJECT, GEORGE WASHINGTON UNIVERSITY

Introduction

It's easy to overstate the impact of the news media on politics, even on presidential nominations and elections. In 1984, remember, an incumbent president was able to control totally his party in his bid for renomination -- something we had come to believe a near impossibility in the age of television news.

Reagan's renomination notwithstanding, the news media -- defined here principally as network television -- generally do have real consequences for the present-day nominations process. In fact, a case can be made that the impact of network television on the nominations process is greater than the effect of the news media on any other part of the national political process.

The Case of Gary Hart and Mediality '84

Let's consider the most vivid case of media impact in 1984 -- the meteoric rise of Gary Hart.

It is not possible to prove that the news media caused people to shift dramatically toward Senator Hart during the first two weeks in March in 1984. Indeed, one can argue that the Democrats who moved toward Hart did so because: (a) Hart really was the year's first plausible alternative to Walter Mondale

BEST COPY AVAILABLE

for the Democratic nomination; or (b) Hart really did win the New Hampshire primary.

In fact, I accept both of these non-media-based interpretations of Hart's early success as valid, at least in part. Nonetheless, I think that Hart's phenomenal surge in the national polls needs to be understood in terms of "mediality" as well as "reality."

"Mediality" is reality, but reality filtered through the prism that is the press. "Mediality" reflects not merely events or conditions, but events and conditions as the press reports them, and, of course, as political leaders help to define and interpret them.

Hart's case, as "mediality," is instructive, but it is also unusual. Our year-long record in 1984 shows at least as many cases in which "mediality" did not carry much electoral impact. But Hart's case does suggest what "mediality" can do during the early campaign.

On February 25 (just prior to the primary in New Hampshire), seven percent of the Democrats preferred Hart for the nomination. On March 2, that figure was 34 percent; on March 6, 38 percent wanted Hart as the nominee. In fact,at one point during this period the polls indicated that up to three million Democrats per day were switching to Hart, the greatest preference shift ever in the history of polling for the nomination.

Again, nobody can prove that the news media caused this shift. I've already offered two other interpretations that emphasize "reality," not "mediality." Still, looking at the figure on the next page -- a figure that graphs Hart's share of the newshole on network news and his support in the polls -- one would have to be somewhat naive as to believe that Gary Hart

BEST COPY AVAILABLE

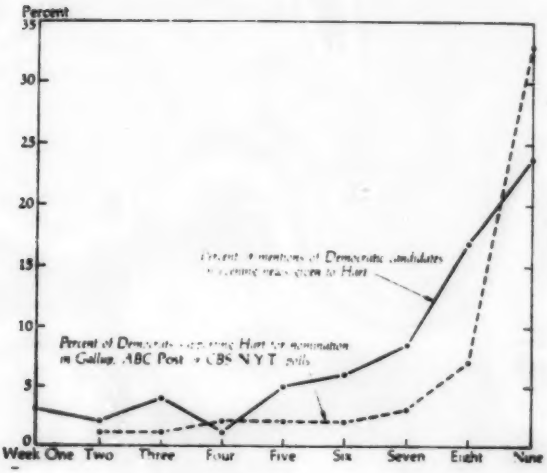


FIGURE ONE

Hart's Share of the Newshole on Network News and His Support in the Polls
(First nine weeks of 1984)

BEST COPY AVAILABLE

in early March reflected only "reality." FIGURE ONE

The correlation between Hart's share of the network newshole and Hart's standing in the polls is extraordinarily strong. Note, too, that support follows exposure -- so causality is at least implied by this graph.

If one needs a single case history suggesting that the news media -- broadcast journalism -- have an independent effect on the nominations process, Gary Hart's campaign in 1984 is about as good a case history anybody is likely to find.

How the News Media Influence the Process

The Media Analysis Project has analyzed content and performance of the news media for the last two presidential elections. Focusing mainly on network journalism, we find three patterns of performance that are likely to produce "mediality" instead of "reality," and, therefore, to produce a media-based effect on the nominations process.

One ought not be deterministic about these things however. President Reagan transcended all of this in 1984. And Walter Mondale, the early front-runner and choice of the party leadership, eventually did win his nomination. But, over time, these three practices will continue to produce real consequences in nominations politics, as they have since the early seventies.

"Surprise Journalism"

All the news media, but particularly broadcast journalism, have a marked tendency to shift attention dramatically to anyone who does surprisingly well

BEST COPY AVAILABLE

in a primary or caucus.

The figures on Hart show that pattern in 1984, but not quite so clearly as figures for John Anderson in 1980. I have included data from our research in January, February, and March of 1980, looking at the attention given Anderson on CBS and in UPI. Unlike Hart, Anderson won no primary, no caucus. But he was the surprise candidate, especially when he came in second in the Vermont and Massachusetts primaries.

Note that the Anderson "surprise" in 1980 produced nearly four times as much coverage in March as in February on CBS -- about three times as much in UPI. FIGURE TWO "Surprise journalism" followed Anderson in 1980 as it followed Hart in '84, and Jimmy Carter, as well, back in 1976.

Four things need to be said about "surprise journalism." First, the news media acknowledge that they practice it -- "surprise journalism" being nothing more than the commitment by the press to cover what is new. Second, "surprise journalism" is much easier to defend than that which it replaced -- the journalism of "moral victory," the sort of reporting during the early 1970s in which George McGovern might actually be labelled as a "moral victor" by the media, even when McGovern lost the primary at issue.

Third, "surprise journalism" need not always produce popular support for the candidate who increases his or her share of the newshole. Jesse Jackson could not trade his increasingly great exposure for increased support nearly as efficiently as Hart or Anderson.

Fourth, despite Jackson's case, under most circumstances the "beneficiary" of "surprise journalism" will profit from the increased exposure, quickly and broadly. Even if the candidate doesn't win, "surprise journalism" matters.

BEST COPY AVAILABLE

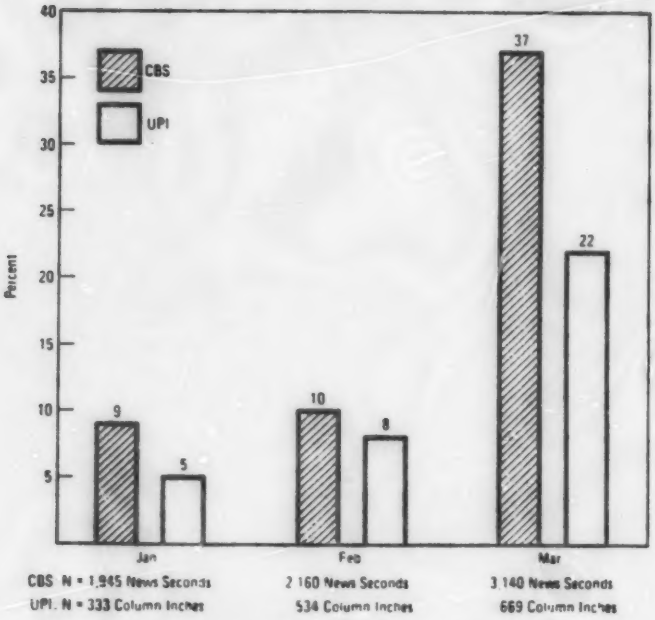


FIGURE TWO

CBS and UPI Coverage of John Anderson, January - March, 1980

BEST COPY AVAILABLE

Hart surged after his victory in New Hampshire. But he also jumped a bit after his distant second place showing in the Iowa caucuses -- a second place showing that lead to more exposure, and then, to more support.

"Early Bird Journalism"

"Surprise journalism" is a possibility. "Early bird journalism" is a certainty. Even if there is no surprise candidacy -- hence no "surprise journalism" -- it is without question that the news media will give disproportionate attention to the early (earliest) phases of the process.

No matter how important the last few primaries are, no single primary in June ever attracts the attention the first caucus or primary attracts five or six months beforehand.

Part of that has little to do with the media per se. New Hampshire is the first primary and is the only primary taking place that special day. On Super Tuesday in June -- the "old" Super Tuesday -- as many as eight states may be holding primaries within that 24-hour period. So New Hampshire gets more coverage simply because it has no direct "competition" on its own primary day.

But part, too, is the media's commitment to "early bird journalism," hyping whatever comes first (early) in the process. In 1976, for example, I found that New Hampshire received twice as much coverage as Massachusetts, twice as much coverage as Florida, and three times as much attention as New York. All three were, in reality, important primaries, but New Hampshire came first and that meant more "newsworthiness," even in absolute terms.

BEST COPY AVAILABLE

More remarkable, perhaps, are the figures when one factors in the actual vote in these states. In 1976, for example, New Hampshire Democrats received 170 times as much network news attention per vote as Democrats voting in the state of New York.

In 1980 we have similar figures for all the primary states (plus Iowa) and the case is crystal clear: the earlier the caucus or primary, the greater the news worthiness of the state and the greater the attention for each individual voter. In 1980, each New Hampshire voter got 50 times as much network coverage as each voter in California, 60 times more than each voter in New Jersey. Iowa did even better than New Hampshire. FIGURE THREE

Three things need to be said about "early bird journalism." First, it makes some real sense for the media to give greater attention to the early states, and, of course, the states that vote "alone."

Second, the candidates are "worse" than the journalists in starting early and camping out in the early states. I've had to change my mind about this over the years: The media are, in comparison, less guilty of hyping the early states than the candidates -- all the candidates.

Third, although "early bird journalism" is presently a certainty, it is also easily remedied. Political leaders and parties have it very much within their power to cope with -- neutralize -- the impact of "early bird" reporting. Indeed, regional primaries or a national primary day could change the system quickly and substantially.

Nevertheless, as it stands now, "early bird journalism" is a reality and it is a major factor in nominations politics. Gary Hart's case is as much a story of "early bird journalism" as anything else. Until Super Tuesday --

BEST COPY AVAILABLE

Index of News Attention Per Voter, 1980, CBS Only; Iowa = 100

Iowa	1/21	100
New Hampshire	2/26	92
Massachuestts	3/4	8
Vermont	3/4	7
South Carolina	3/8	23
Alabama	3/11	2
Florida	3/11	3
Georgia	3/11	0
Illinois	3/18	6
Connecticut	3/25	7
New York	3/25	11
Kansas	4/1	0
Wisconsin	4/1	5
Louisiana	4/5	2
Pennsylvania	4/22	5
Texas	5/3	1
Indiana	5/6	1
North Carolina	5/6	0
Tennessee	5/6	0
Maryland	5/13	1
Nebraska	5/13	2
Michigan	5/20	3
Oregon	5/20	3
Arkansas	5/27	1
Idaho	5/27	1
Kentucky	5/27	2
Nevada	5/27	0
California	6/3	?
Montana	6/13	0
New Jersey	6/13	1
New Mexico	6/13	2
Ohio	6/13	3
Rhode Island	6/13	0
South Dakota	6/13	2
West Virginia	6/13	0

BEST COPY AVAILABLE

the new Super Tuesday -- Hart profitted from winning more of the "early bird" states, even though the vote totals were meagre.

"Compensatory Journalism"

"Early bird journalism" and "surprise journalism" have their critics. But neither practice is as controversial as "compensatory journalism," the tendency by the news media to treat front-runners more critically, challengers less critically, and emerging front-runners most critically of all.

In 1980 and in 1984 we found incumbents and front-runners getting a "tougher press." And "surprise" candidates did particularly badly, not at first, but as soon as the "surprise" candidate became the new front-runner.

In 1984, a less than systematic review of Gary Hart's press a week after his victory in New Hampshire shows that his press coverage became increasingly more negative as he surged in the polls. In 1980 we observed very closely the same pattern in press coverage of John Anderson.

This last figure shows how Anderson's press tone shifted on CBS from very positive to very negative in two months' time, as Anderson emerged as the "surprise" candidate. What seemingly happened to Hart in 1984 did in fact happen to Anderson in 1980. FIGURE FOUR

Our research also shows that Ted Kennedy was, like Anderson, very much subject to "compensatory" reporting. Doing badly in the press when he was doing well in the polls, Kennedy's case suggested that "compensatory journalism" exists for Democrats as well as Republicans. And Kennedy's press improved when it was clear that he could not win the nomination -- compensation again.

Four things ought to be said about "compensatory journalism:" first, the news media know full well that they do this sort of thing, indeed

BEST COPY AVAILABLE

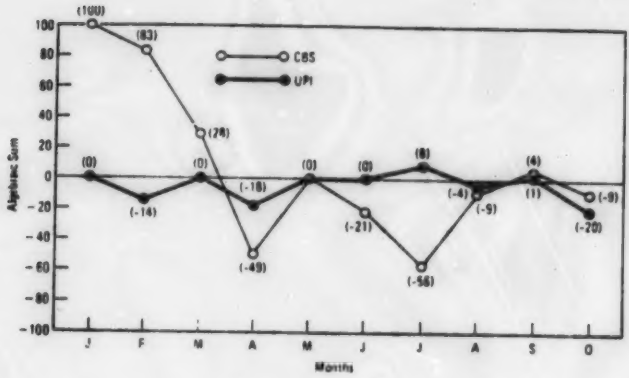


FIGURE FOUR

John Anderson's Press Tone on CBS and in UPI, Campaign '80

BEST COPY AVAILABLE

consider it part of their professional mission. Second, one can make a case for this practice: the person most likely to secure a nomination -- or win the election -- does "deserve" closer scrutiny. Third, "compensatory journalism" affects voters. The Anderson and Hart cases prove that, I think. Finally, I consider "compensatory journalism" to be the most powerful tool the press has in reporting presidential politics. So, to whatever degree this important practice becomes "partisan" (to this point it has not), "compensatory journalism" is dangerous -- not just to incumbents and front-runners, but also for the press.

Conclusions

My first conclusion is that while none of these practices is irresponsible journalism, all have consequences that extend beyond the mere reporting of "objective reality."

One can quibble over definitions of reality to be sure. But the change in the quantity and quality of Hart's press was perhaps as much a function of the news process as a function of "the facts." And Hart's case, while less than typical, is hardly unique.

Second, I think the news media have actually corrected for some of their own performance problems. There seemed to be a slight shift away from the "early bird" bias in 1984. And the networks have become increasingly more sensitive about the problem of "moral victory," declaring a real loser to be a phantom winner. On the other hand, "compensatory journalism" is, if anything, becoming more evident with time. Hart's media bubble was, for example, pricked by the national media much more quickly than Anderson's.

BEST COPY AVAILABLE

Third, there is some irony in all this. The networks have, of late, been undermining their own effects. The national media actually seem eager to do so -- to neutralize one consequence with another. "Surprise journalism," for example, is a pattern of behavior that inherently helps challengers and dark-horses. But the last two suggest that if the media sense that a challenger is profitting (too much?) from "surprise journalism," or from "early bird journalism," correspondents react quickly by compensating, by getting tougher on the emerging challenger, whoever he is.

Whatever the press' motives in all this, the result is the same: as the campaign winds on, the news media are increasingly more likely to remove the wheels from the band wagon they've helped to create in the early stages of the nominations process.

And finally, I would conclude that most of these media-based effects are very much subject to control -- control by the parties or by the Congress, or by both. I do not mean controlling the behavior of the news media. I mean, instead, designing institutions and procedures that minimize the "noise" in the system that "medialities" can create.

My own thinking is the current system actually has more going for it than most political scientists will admit or believe. But if we want to neutralize the impact of "early bird journalism," or "surprise journalism," the path is clear.

By changing the rules one can readily change the news environment so

BEST COPY AVAILABLE

that "early bird journalism" or "surprise journalism" are somewhat less likely to be practical. And, by changing the rules one can insure that the consequences of those practices will be markedly reduced. A national primary will, at once, make it far less likely that any of the three practices will be as easily followed. A national primary day will certainly neutralize the effects of all three.

Of course that reform will have its costs as well -- probably shifting influence away from "free media" and toward "paid media," an outcome I would personally wish to avoid.

But the Congress is considering "regional primaries," and that system, too, will help reduce somewhat the consequences of "early bird journalism" and "surprise journalism." So regional primaries may be a good mid-range "solution," as many members of the House believe.

Still, I must admit, the system, as is, has much to be said for it. And, if nothing else, President Reagan has shown us that the "news media" have not so fully redesigned presidential nominations politics as we all had come to assume. Granted the modern news system produces "mediality," but "mediality" is, at worst, distortion, not fiction. And, as of today, "medialities" are distortions that favor neither party nor any single philosophy.

So, in the end, "surprise journalism," "early bird journalism," and "compensatory journalism" may produce lots of "noise" in the system. But the "noise" is predictable and non-partisan. Regional primaries might well improve things, but things could be worse than they are.

BEST COPY AVAILABLE

Mr. SWIFT. Thank you very much.
Dr. Ranney.

TESTIMONY OF AUSTIN RANNEY, RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE

Dr. RANNEY. Congressman Swift, I think I can speak for every one of your witnesses this morning when I say we're delighted that the committee is holding these hearings, considering legislation on changing the Presidential selection process, partly because it shows a commendable interest in the national welfare, but also because it keeps going a cottage industry that a lot of us have worked in for the past 20 years.

I served as a member of the McGovern-Fraser Commission and later on the Winograd Commission. I have published two books and about six articles on the subject, and I am still requested to give lectures—not at great fees, but not bad--and finally, there is the real prestige and honor and thrill of testifying before a committee of the Congress of the United States. So I hope you will keep it up and I do commend you for it, as we all do.

Let me share one or two general observations about the process of reforming the Presidential selection process, and then I will get to some of the specifics.

One of the things that I have noticed, as a member of the McGovern-Fraser Commission, and having observed it in the 20 years since, is that there is something of a partisan imbalance and concern about it. I mean, we may be, as Pat Caddell said, the engine of reform, and the Republicans the caboose, but up in the engine, the engineer and the fireman and the president of the board are always hitting each other in the head and saying "we've got to do this, we've got to do that", while for some reason all is well back in the caboose.

I sometimes get the feeling that what we Democrats should seek is an irrational, crazy-quilt, nonsensical process that would produce a winner every now and then, and let the Republicans have the fair, open, and rational process that produces the steady success of losses that we Democrats have had for some time. However, being a Democrat, with a capital "D" as well as a small "d", of course, like Mr. Caddell, it seems that we would rather lose with a product of a good process than win with a product of a bad process—or perhaps you wouldn't adhere to that proposition.

The second thing is, in the Aesculapian oath that physicians take, the first thing they swear to is, first, do no harm. That's not bad, I think, for us reformers. I think we would have to revise it and say first, do no more harm. I think that's not a bad motto to keep in mind as you're considering these things.

Many issues have been raised in these bills that are before us in the discussion this morning. I want to focus on just two or three of them. And let me take up where Mike Robinson left off.

Mike has said it may be that the media will be less influential in the Presidential selection process of the future perhaps than they have been in the past. That may well be. If Mike says so, there must be something to it. But if they are less influential in the process than they used to be, they still will be far more influential than

BEST COPY AVAILABLE

anything else. Because the reality of Presidential politics is what the media say is going on.

Let's remember that, quite deliberately, going back to the early years of the century, we have turned the selection of our Presidential candidates over to ordinary people voting in the primaries. That is where the decisions are made. We know what we're doing. We intend to do it that way. No other country in the world, let me add, picks its party leaders that way. The party leaders are chosen by very small groups of people, as we did in our own congressional caucus. We have turned our faces against that.

Now, those of us who vote in these Presidential primaries—and almost every one of us in this room has at one time or another—how do we know those candidates? The answer is we can possibly know them only as figures on television, the way the look on television, the way they sound on television, or whether or not we see them on television.

For example, take 1984. It may be that Reuben Askew or Fritz Hollings had all of the qualities that would have made either one of them a marvelous candidate—perhaps denying Mr. Reagan his second term, perhaps not—and if they would have been elected would have been among the great Presidents of the United States. We'll never know because they didn't have the slightest chance. Why not? Because the media decided, quite correctly—I would have decided the same thing if I were a network news chief—that Mr. Hollings and Mr. Askew were nonstarters. So as far as the Presidential contest was concerned, it is as though they didn't exist at all. Far more important than any rule of the Democratic Party or of the Republican Party, or of any act of Congress, was the decision of the network news chiefs that Hollings and Askew were nonstarters.

Now, I don't think anybody thought that Jesse Jackson was going to get the nomination in 1984, or that he's going to get the nomination in 1988 or 1992, but he was big news for all sorts of other reasons. It is those judgments the media are going to continue to make that will be political reality.

Now, as to the concerns that you gentlemen on this subcommittee are facing, that ultimately the whole Congress will face, I am going to focus on just three of them. One is the length of the process; is there some way of shortening the process, of rationalizing it, or reducing the wear and tear on the candidates, perhaps making it less expensive? And the second question is what to do about front loading and, more particularly, about the special influence of Iowa and New Hampshire. And Pat Caddell gave us a third consideration: How to avoid a national primary.

As to the first one, how to shorten the process, I think there is nothing this committee or the Congress can do that is going to short the process. The aspirants who want the Presidency are going to start doing what needs to be done to maximize their chances, and with the media coverage that is now going on, with the unfailing temptation of the straw votes in the various States to get some attention for their activities, and with the medias' constant focus on Presidential politics to the great exclusion, as some of Mike's work has shown, of the coverage of the Congress or the courts or

BEST COPY AVAILABLE

the bureaucracy, you're going to continue to have a lengthy process. The fact is Presidential politics is now nonstop.

One of the big stories that came out of Mr. Frenzel's party's convention in Dallas a couple of years ago was the jockeying between Mr. Bush and Mr. Kemp to help them look good for getting the 1988 nomination. I submit that the struggle for the Republican nomination for 1988 began to take place in a serious way before the 1984 Convention had even met. If that isn't nonstop Presidential politics, I don't know what is. I don't think anything that this committee or the Congress or any of the rest of us could do is going to change that. So if you're thinking of shortening the process, forget it It can't happen.

But then let's look at frontloading. What is it that we don't like about frontloading. Pat Caddell and a lot of other people don't like it because they're afraid it's moving us toward a national primary. What they want is a sequential kind of a process, so that unknown candidates can, by doing well early in the process, become serious candidates that will perhaps actually ultimately get the nomination. I would suggest that that is possible only if the media decides they are serious contenders or they are newsworthy for some reason or other. I think that is less a matter of the rules, though the rules have something to do with it, than it is news decisions by the national news media.

Then we have the question of the special role that Iowa and New Hampshire have had in the past. I wish Pat Caddell had stuck around because I wanted to ask him a question. It sounded to me as though he was saying "well, we really shouldn't have a national primary, but New Hampshire is so doggone representative, and the citizens there are so interested and work so much better than the other States, that if we're going to have a national primary, we ought to have one and it ought to be confined to New Hampshire; let New Hampshire vote, and whoever wins New Hampshire, let him be the nominee." I don't know if Pat would have gone quite that far, but that did seem to be the logic of what he was saying.

I think the majority view in Democratic Party, and in the country generally, is really twofold; that Iowa and New Hampshire are not ideal cross-sections or representative of the whole Nation. They feature retail politics, and the kind of person who does very well in personal handshaking in Iowa and New Hampshire may not be the best person to campaign for the Presidency and then win in November, or become a successful President if elected in November. It isn't the best way. Furthermore, what is there about those people, because of their self-selection of primary dates, that gives them this special power? Many, many people feel that way.

So what is happening in a lot of the other States—the current move toward the southern regional primaries is a case in point, and the discussion in California of more of the same—is a feeling that we want to have the same kind of power, a real say in who we're going to get for these Presidential nominations. We're going to have to get up there with Iowa and New Hampshire, although New Hampshire will make it difficult to get ahead of them because their law requires that their primary be at least 1 week before any other State's primary.

BEST COPY AVAILABLE

Remember, 4 years ago Alaska was talking about having a primary in early January. The thought of an early Presidential primary in Alaska really boggles my mind. It certainly would have weeded out the candidates that really wanted the job if they had campaigned in January in Alaska. [Laughter.]

But presumably, the New Hampshire law would have required them to have had their primary election in December 1987, before Alaska's primary, they've got to be a week before anybody else. So the other States are trying to do something about that.

Now, given the role of the media, and the way I think most ordinary Americans look at it, any process except a 1-day National primary is bound to be frontloaded. I don't think there's any way you're going to get away from that, because whatever events happen first, those are the real news. The poor starved reporters have been operating for nearly 3 years on straw polls and guesses and public opinion polls, and Gallup says this and Harris says that, and ABC and the Washington Post says something else. At long last here we've got some real news, some real people who voted in a a real situation, and here are the facts. Wherever that takes place, that is going to have an undue impact. It's going to get a lot more attention, as Mike has pointed out, than are the events that come later. Anything that is sequential, that doesn't take place on one date, is going to be frontloaded.

One of the things that has not been commented on much—and you don't object, do you, Mr. Chairman, if I comment on some of the specific legislation before you? That is permissible?

Mr. SWIFT. I think, before we're through today, somebody should do that. [Laughter.]

Dr. RANNEY. All right. Just for the novelty of it, let me say something about it.

I think one of the most intriguing suggestions in the various bills that are before us—it's not clear to me whether it's in the Bennett bill or not, but it clearly is in the Levin bill—is the principle of rotation, namely that we set up a series of regional primaries and we adopt a principle whereby in each 4-year period, a different set of States will come first. We will still have frontloading, but over a series of elections everybody in the country will get a chance to be in the frontloaded part.

I must say that appeals to me. If we accept that we don't want a National primary—and that's another subject that I'm not going to talk about here—but if, as seems to be the consensus here, we don't want that, the process is bound to be sequential. If it is, of a proposition that whatever States come first are going to have a lot more clout than the ones that come second. So we have to deal with the question of should Iowa and New Hampshire always come first, or should we rotate this special clout among various sections of the country so that we won't always bias the election in favor of a particular kind of a candidate and a particular kind of campaigning.

I would commend to the committee that if you do go the regional primaries route, that one of the most important principles—probably more important than anything else about a regional primary to be preserved there—is the principle of rotation. But whatever you do, Mr. Chairman, let me close where I began, by saying I hope

BEST COPY AVAILABLE

you keep doing it. I don't know if it's good for the country or the parties, but it's great for business.

Mr. SWIFT. We'll try to keep you in business, if we can.

Mr. Robinson, first of all, I am intrigued with your concept of compensatory journalism. I am also wondering if we haven't got a corollary, that we've got to have a contest so let's hype No. 2, regardless of who No. 2 may be, and a corollary to that, which I thought was rather markedly demonstrated with Senator Glenn, is punishment for failed expectations. He was supposed to be No. 2, and they were doing everything along the lines of "we've got to have a contest, so let's hype No. 2, and then he failed them.

It seemed to me, before they all rushed to Mr. Hart, who was the new No. 2, that on the way out the door they took Mr. Glenn's nose and tweaked it bad for having caused them that inconvenience. I'm not asking you to comment on that. It's probably not true.

Professor ROBINSON. They did tweak, but for a very short time, because they wanted to go on and tweak someone else.

Mr. SWIFT. Yes, just on the way out the door, they said: "Don't you do that to us any more. You got us all excited and then failed us."

Mr. Ranney, you have said it violates the principle of one man, one vote, the present system, because the decisions made in the early delegate selection contest count for a great deal more than what happens in the late contest. I presume that you were just kind of stating that as an observation, that you find that inevitable in any event; is that correct?

Dr. RANNEY. I find it inevitable in anything other than a national primary which takes place sequentially, that if things happen on different dates, what happens on the first date is going to have more attention and therefore more impact on what happens on later dates.

Mr. SWIFT. And that's the reason the principle of rotation is an important one if you're going to have——

Dr. RANNEY. It passes the special clout around. It does not remove special clout.

Mr. SWIFT. Would you care to comment on Mr. Caddell's proposal, that you weight these primaries. Is that practical as far as Federal legislation is concerned? Is it something the parties could do, or is it too idealistic to be practical? Do you have any thoughts on that?

Dr. RANNEY. Well, I suppose anything is practical if there is a very strong will to do it. But there is not a strong will in the parties or in the Congress, or certainly in the country, to do something so complicated as Mr. Caddell is suggesting.

Let me remind you, Mr. Chairman, that if you want to know what the American people want, the polls have shown consistently that about 70 percent of the American people want a 1-day national primary. They may be wrong in that, but that is what they want. So if we are moving that way, we are moving the way the people want us to move. Now, maybe we know better than they know what is good for them. But the idea that you could drum up in the parties, or in a reform commission, or in the Congress of the United States, to say nothing of in public opinion or on ABC, CBS,

BEST COPY AVAILABLE

and NBC enthusiasm, for the elaborate kind of process that Mr. Caddell has, the chances for that seem to me to be nil.

Mr. SWIFT. Do you share with him his concern that it is important to have that tripartite system so that you have a different weight to primaries as you go through the system, or do you not see that as important as he seems to feel it is?

Dr. RANNEY. I guess I have come to the conclusion, Mr. Chairman, that elaborate and complicated tinkering with institutions—Mr. Caddell himself has talked about the law of unanticipated reactions—that one, I suspect, would produce more unanticipated reactions than anything else that we could dream up.

I do not believe that we can predict, on the basis of proportional representation, that you would get one set of results out of the first round, and then, if you had winner take more as the principle of the second round, that that would produce the kind of set of results you want, and the third phase, which I take it is winner take all, would produce finally the consensus candidate that everybody is all for, that none of those things would happen.

Mr. SWIFT. Let me ask you both to look into your crystal balls. We see the trends, everyone wanting to get into the primary process for a variety of reasons. What do you think that's going to look like as we look back on it from the vantage point of January 1989? Is it going to have been chaotic to the point that somebody should have done something, or do you think, while it may be chaotic and untidy, that's kind of what democracy is and it's of no great concern?

Professor ROBINSON. Well, I share Pat Caddell's prediction that we're going to have an enormous number of States selecting delegates in March 1988. I do not share his conclusion about that. I don't think it's any more chaotic than what we've had. In fact, at least it puts everybody in the 4-week period of time as opposed to a 6-month period of time.

I would be much lighter in my interpretation as to what this would mean, or whether or not this is a negative for the American political process. All this may harm certain types of candidates, but I do not see what is going on in 1986 leading to 1988 as necessarily a negative. I can't remember who said it this morning, but it might be a good idea to see, now that we are sliding so quickly, it might be a good idea to see how much slide takes place in the next couple of years time and what that means.

I, myself, don't think an enormously heavily frontloaded delegate selection process is all that negative a development for selecting presidents or selecting nominees.

Mr. SWIFT. Mr. Ranney.

Dr. RANNEY. Mr. Chairman, let me say two things about that.

First of all, if I had to make a prediction, I would say that—it doesn't even have to be as late as January 1989—let's say in April or May, or at the very latest, July 1988. I think a number of people are going to say, particularly in the South, "Well, we did this so that the South could have a really major role in the selection of the candidate, so that somebody like Sam Nunn could get nominated, and it didn't happen and it didn't work and it was very disappointing; whoever did get nominated isn't the kind of person that we had in mind."

BEST COPY AVAILABLE

But looking further down the road I think is the more interesting thing. You see, I remember—and I'm sure Bill Frenzel does, too—I'm sure the discussions we were going through about this in 1978 and 1979 that led to one of the many commissions and a number of changes, in which we were saying one of the things wrong with this process is it has been producing lousy candidates. I mean, we load the process so that an unknown could come to fore. And Jimmy Carter, God knows the greatest unknown in the history of American politics, not only got the nomination but was elected President. And in the late seventies we were saying well, maybe that wasn't such a hot idea.

And then, in 1980, what did we do? Well, it was really terrible. The process was a choice between the same failed Jimmy Carter on the one hand, and an aging ex-movie actor, from far right wing, who said he was going to dismantle the welfare state, and cut taxes, and balance the budget, and increase defense, and do a lot of really nutty things. And you remember Hamilton Jordan saying with confidence that the American people were not going to elect this aging, ex-movie actor, right-wing kook.

Well, you know, I'm a Democrat. I did not vote for Mr. Reagan, either in 1980 or 1984. But as a political scientist, I would have to say, by any standard that we normally apply, Ronald Reagan has been a highly successful President of the United States. He has had a great ability to institute the programs that he has wanted to institute; he has changed the fundamental nature of American political debate; the opinion of the Presidency as an institution is the highest it has been. There is an atmosphere of optimism in the future that we haven't had in this country for a long time. As I repeat, I did not vote for him.

But we cannot say that a nominating process that produced Ronald Reagan is horrible and that another candidate picked by the Republicans would have done a great deal better. So, if that is the case we're going to look at the 1988 process, I would suggest we look back about 1990 or 1991 and see what we think of the individual that this process produced. If that individual is doing pretty well and the country is in pretty good shape, we'll think the process is pretty great. If that individual is not doing very well, we'll say we did something wrong, all probably resting upon the incorrect assumption that if we only get just the right system it will always produce the best possible candidates and the best possible candidates will always be the best possible Presidents.

I don't think any system is guaranteed to produce the best possible candidate or the worst possible candidate. After all, the congressional caucus system was very undemocratic, very narrow-minded, very closed, awful—and it came up with a lot of "bums" as candidates like James Madison, and Thomas Jefferson, and John Adams. Now we've got this terrific, open process that gives us Richard Nixon, and Jimmy Carter, and Walter Mondale, and who knows who in 1988.

But let us also remember the old convention system also produced James Buchanan, and Millard Fillmore, and Franklin Pierce, and some other names that I have trouble recalling, so it was no guarantee that it was going to produce good candidates, either.

BEST COPY AVAILABLE

I suspect that the system we've got now gives us—and by us, I mean the American people, politicians and nonpoliticians—the opportunity to pick a good person, and if we do not use our best judgment to pick a good person, then ultimately the fault, it seems to me, is more with us than it is with the system.

Mr. SWIFT. One last question.

If we were to approach the solution to this problem through a regional primary—as you indicated, we've got a couple of proposals—the standard one is to try to divide the country up into roughly equal regions. A criticism that Mr. Levin makes of that is that regions are not representative. So he would divide the country into regions and then select States out of each region that would go on a series of dates, so that each one would be relatively homogenous.

Having heard your suggestion that rotation in any event would be good, do you see an advantage of one approach, regional, or the other approach, which would be more homogenous? Are there advantages or disadvantages, either way?

Dr. RANNEY. My horseback opinion on the Levin proposal is that it's too cute. It's too complicated It's a little bit like Pat Caddell's. It's too cute, too complicated, and it's going to produce a lot of unnecessary political flak, invidious comparisons, who's representative and who's not from a particular region, and what I think is the important principle, the rotational principle, would probably be lost sight of. So my feeling is that the principle of rotation is much more important, if you're going to go the regional primary route, than the particular basis on which you decide whose States are going to be in which region, however you decide that, giving each region a chance at being first, another one, each a 4-year cycle.

Professor ROBINSON. I think that having primaries in different parts of the country, all on the same day, in this sort of amalgamational regional primary day, is a bad idea, for a number of reasons. But certainly in terms of news media coverage, I can already see Bob Simon from CBS doing several pieces about the absurdity of Congress passing legislation that would allow a candidate to have to fly from Texas, to Minnesota, to Massachusetts, to California, and I can see the visuals for days at a time showing how silly this new system is.

So while I do think there are problems with a system that will allow for regions that are geographic, I think in the long run, both in terms of news media coverage and in terms of the logical political process, it is better to have geographical regions rather than States taken from different parts of the country.

Mr. SWIFT. I hear your advice: Beware of discommoding the news media in their coverage of presidential elections.

The gentleman from Minnesota.

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. Robinson, would you prefer to leave the system alone?

Professor ROBINSON. Well, I don't think I would have said that until I heard Pat Caddell's testimony. Now I'm more eager to leave it alone than I otherwise was. Because he seemed to be so much in a rush to either freeze it in place or change it dramatically that I couldn't decide which way we were to go. And then he said: "I'm worried about this system because it wouldn't have given us Ronald Reagan in 1980. I'm worried about the system because it

BEST COPY AVAILABLE

almost denied the nomination to Walter Mondale in 1984." And then 10 minutes later he said: "I'm worried about the system because it doesn't give outsiders a chance," or these reforms might not.

Well, you can't have it both ways. Either you want Walter Mondale as a front runner to take the nomination, or you want Ronald Reagan, as he was the front runner in 1980, to take the nomination, or you worry about challengers. So now he has made me concerned that most of the notions of reform really haven't told me exactly what the problem is and how we can settle it.

I have, however, decided that although the term has now become something of a "dread disease" in hearings, and also in the academic literature, that a national primary may be better than regional primaries. I can see real difficulties in trying to get the States to go along with regional primaries, regardless of how they are constructed.

I don't think the national primaries are particularly a bad thing. They give some opportunity to challengers; they do provide real advantages to front runners—and I think that's a reasonable blend. You can, of course, if you set up legislation for a national primary day, require a certain minimal amount of votes for the winner in order to achieve a nomination, or do any number of things if no one gets that minimal amount. I think that is better now perhaps than the regional primary day.

But, as of the last 3 hours, I would say I have come back to thinking that we ought now, in 1986, do nothing about what goes on in 1988.

Mr. FRENZEL. Brother Caddell makes Senator Packwood look like a model of gradualism.

Professor ROBINSON. True.

Mr. FRENZEL. Dr. Ranney, your advice is that we should do nothing but talk about it regularly, is that it? [Laughter.]

Dr. RANNEY. That's the first and most important thing. If there is any time, and energy, and financial support left over for something after we have done that, we might want to think about it. But first things first.

Mr. FRENZEL. Thank you very much.

Mr. Chairman, I yield back the balance of my time.

Mr. SWIFT. The gentleman from California.

Mr. THOMAS. Very quickly.

Mr. Robinson, you have indicated a kind of style of journalism, and it's kind of after the fact. But do you feel that we've had enough of an opportunity in observing it that you can begin to predict a style or a meter as to what's going to happen in 1988? Have you thought about doing that in terms of going out on a limb?

Professor ROBINSON. Well, we will do it in 1988. We have just done it for so long that it seems there is a momentum to do it again. I don't think it would be hard to defend, either with case studies or with numbers, the notion that there is clearly surprise journalism, "early bird" journalism, and compensatory journalism.

The only one that I think is even controversial as to its existence or not is "compensatory journalism." I used the case of Roger Mudd because it was so clear in 1980 and so clear in 1984 that Roger Mudd had decided that he was going to show the American

BEST COPY AVAILABLE

people some other sides to candidates who were doing particularly well in the media and in the polls, and because he himself has said, when interviewed:

> I consider this my job. If a candidate comes from no where, or a candidate has the mystique of the Kennedy name, I have to tell the American people, indirectly or with questions, as much as I possibly can about this newcomer or about this political legend.

My own thinking is that compensatory journalism is dangerous. If liberal journalists practice compensatory journalism against conservatives, but not against liberals, I would be very concerned. But our own research shows they do precisely the same thing against Democrats that they do against Republicans, against Liberals, and Conservatives.

So compensatory journalism may be controversial as a press norm. I do definitely believe we have documented it in 1980 and 1984, and as long as it stays nonpartisan, I am willing to say that this is the job of the journalist, to say "Gary Hart is a new face; let's take a look at that face."

Mr. THOMAS. Dr. Ranney, very briefly, obviously the Democrats have been driving the change in the system, and I think what you were saying was, if they could come up with a winner or two, the process wouldn't look nearly so bad as it does right now.

Dr. RANNEY. It is, I think, no coincidence that in the one reform commission, the Winograd commission, that operated, it was actually founded before the 1976 election, reconstituted, not insignificantly, in January 1977. It was the first commission to kind of fall back and make very clear that it wanted to guarantee, as Pat Caddell quite correctly pointed out, an early victory for a front runner. It was a very different mood of a commission from all of the others.

In any kind of a contest, when you have just won a big victory, you have won the World Series, you don't say gosh, what did we do wrong? We've got to strengthen our outfield and get some more pitchers, and so on. That tends to be something that losers say. You will get a different atmosphere in the approach to reform from people that have just produced a winning and rather successful President than you will from a party that has gone a long time without a serious candidate.

Mr. THOMAS. That rationale may explain why Republicans have been comfortable in the caboose position.

Dr. RANNEY. Yes.

Mr. SWIFT. Thank you both very much for helping the committee.

The committee will take a recess for the vote that's on the floor, on the rule, and we will reconvene in 15 minutes for our last panel and our last individual witness.

[Whereupon, the subcommittee was in a short recess.]

Mr. SWIFT. We will reconvene.

As we have spent the morning discussing what we should do, and placing the cart before the horse, we will now discuss what can we do: What constitutional and legal authority is there for Congress to take action in this area.

We welcome a panel comprised of Eugene Gressman, professor of law, University of North Carolina, and Thomas Durbin, Election Law Specialist, American Law Division, Congressional Research

BEST COPY AVAILABLE

Service. We welcome you both and thank you very much for being here, and we will begin with Professor Gressman.

TESTIMONY OF EUGENE GRESSMAN, PROFESSOR OF CONSTITUTIONAL LAW, SCHOOL OF LAW, UNIVERSITY OF NORTH CAROLINA, AT CHAPEL HILL

Professor GRESSMAN. Thank you, Mr. Chairman. I am indeed honored to be asked to give my opinion as to the constitutionality of the various proposals that are pending before your committee.

In brief, it is my judgment that any kind of proposition that you are considering is, unquestionably, within the constitutional power of Congress to enact, whether it relates to a national primary or a regional primary, or leaving the present situation in place.

But I do want to emphasize at the outset the constitutional provisions that are relevant in this situation, and to emphasize that the framers of the Constitution were much concerned with uniformity in the time of holding national elections. There are two provisions that apply. First, the Article I, Section 4 provision, which states that Congress can regulate the time, place, and manner of elections for Senators and Representatives. Pursuant to that constitutional authorization, Congress has established the Tuesday next after the first Monday in November as the uniform time in which to hold elections of Senators and Representatives.

The other provision, which is more relevant to the matters being discussed today, appears in Article II, Section 1, which states that each State shall appoint, in such manner as the legislature determines, a number of electors, and that Congress may determine the time of choosing those electors, and the day upon which those electors shall meet to cast their votes, which day shall be the same throughout the United States.

Now, both of those provisions were enacted in 1787, at a time when there were no such political functions as Presidential primaries or caucuses or conventions. They simply established the right of Congress to provide for the time of holding both the Congressional elections and the Presidential elector elections.

I think it is important to emphasize here that the uniformity in time for both kinds of elections was one of the elements foremost in the minds of the framers. We have the words of James Madison during the discussion at the Virginia ratifying convention, who said it was thought that the regulation of time, place, and manner of electing Senate and Representatives should be "uniform throughout the continent." Some States might regulate the elections on the principles of equality and others might regulate them otherwise. Madison said that this diversity would be obviously unjust. Should the people of any State, by any means, be deprived of the right of sufferage, it would be judged improper, so that it "should be remedied by the general government," that is, the Congress.

In other words, the framers obviously conceived of the time for electing Representatives and Senators as being should be nationally uniform throughout the country, a single day, and that is what has actually happened.

BEST COPY AVAILABLE

Now, in terms of the Article II provision for the selection of Presidential electors, Congress has long provided that there shall be one uniform day for that election, which turns out to be the same Tuesday in November on which we elect Congressmen and Senators.

What I am suggesting is that the principle of national uniformity, at least with respect to the general elections, the final elections of both the Presidential electors and of Congress, was conceived of and has been followed to this day on a nationally uniform basis.

There came a time in a more recent era when political parties developed their own systems of nominating candidates for these general elections. Then Congress was faced with the problem of whether, in light of these constitutional provisions which relate basically to the general elections, Congress would have the power to go back to and regulate the primary stage that leads to the general election. That is where we have some controlling Supreme Court precedents, mainly, *United States* v. *Classic*, and Burroughs against the United States in the 1930's. The Court there read these provisions in the Constitution very broadly and not literally, and said the questions of time and manner and regulating the elections of both the President and the Congress should be read and applied in light of the basic principle that led to the adoption of these constitutional principles, which was to preserve the right of the people to have a free choice in their election of representatives. Therefore, the Supreme Court has ruled definitively that these provisions, both the article I provision and the article II provision, can be stretched back by Congress to regulate the time and the manner, of holding primaries, both for the presidency and for the Congress, in order to preserve the integrity of the political processes that do wind up with the elections in November.

To that end, the Court, in the *Classic* case and in the *Burroughs* case, held valid efforts by the Congress to prevent certain deleterious effects that could be imposed upon the right of the people to freely select their representatives. So we had the Corrupt Practices Act that was applied to the primary system, both the primaries for Congress and the primaries leading to the final selection of Presidential electors.

In other words, what has happened is that the Supreme Court has recognized that Congress has the power to look backwards in time, from the November final elections, and to regulate and control not only the manner but also the time and the places where these primary elections are being held, as long as the States have somehow integrated those preliminary or primary elections into the processes of electing Presidential electors or of electing Congressmen, be they Senators or Representatives. The end result is what we would call under commerce clause jurisprudence an affectation doctrine, whereby Congress has constitutional power under the commerce clause to reach to the far end of local events that can rationally be said to affect commerce.

So, too, in the election provision of the Constitution, it seems that the Supreme Court has said you can look backwards before November into the primary season and regulate, particularly as to time and manner, the primary processes. That is proper as long as it can be said that those processes, those primary processes, are in-

BEST COPY AVAILABLE

tegrated by the States into the political processes that lead to the final day of election in November.

I see no constitutional problem involved by relating the time requirements, for example, for holding caucuses or conventions. But the essential constitutional predicate is that the caucuses or conventions or the primaries are made by State action, law, or practice, part of the whole election process culminating in the final general election.

In other words, to get back basically to where I started here, all that we have before the Congress at this stage are proposals to regulate the time of holding these preliminary parts of the Presidential election process, whether you call them caucuses or conventions or just plain primaries. And because they relate only to time, that falls squarely within the language of article II, section 1, which says that Congress shall establish the time of holding the election of Presidential electors. We aren't even concerned here with regulating the manner or the place where you would hold these caucuses or conventions. It is the time. You are considering whether you should set a timespan, oe it 90 days or 1 month or whatever. That is certainly within the basic concern of the framers of the Constitution when they conferred power upon Congress to determine the time for electing or pursuing the processes which result in the election of Presidential electors.

In that connection, let me quickly say that under article II, section 1, of the Constitution, the States play no role in establishing that time. It simply says Congress shall have the power to determine that time. Now, States obviously can and do determine it, absent any congressional regulation or statute. But if Congress were to determine that all Presidential

Finally, it follows as night and day, in my judgment, that Congress has the constitutional power to establish the time for pursuing these preliminary processes on any basis it decides in its political wisdom. That is really an exercise of the necessary and proper clause, which gives the Congress vast power to implement the vested powers of Congress by enacting laws that it deems necessary and proper to the execution of those vested powers.

STATEMENT OF EUGENE GRESSMAN, PROFESSOR OF CONSTITUTIONAL LAW, SCHOOL OF LAW, UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

I am honored by the Subcommittee's request for my views on the constitutionality of legislation establishing uniform periods of time in election years in which to hold Presidential primaries and caucuses.

Primarily I shall address only one of the four proposals pending before this Subcommittee, the Udall bill.[1] That bill proposes a nationally uniform 90-day period in which to hold such primaries and caucuses, while the other three bills would divide the nation into designated regions and allocate to each region a certain date within the 90-day period on which to hold the Presidential primary.[2] I do not believe that such a regional feature either adds or subtracts from the constitutional considerations at stake in the Udall proposal. Accordingly I concentrate here on the power of Congress to limit the period of time in an election year during which Presidential primaries and caucuses may be held within the various States.

[1] H.R. 1380 (99th Cong., 1st Sess.). Representative Udall submitted an identical bill in the last Congress, H.R. 6054 (98th Cong., 2d Sess.), on which hearings were held before the Task Force on Elections of the Committee on House Administration on September 19, 1984.

[2] The three regional-type proposals are the Bennett bill (H.R. 251, 99th Cong., 1st Sess.), the Nelson bill (H.R. 3542, 99th Cong., 1st Sess.), and the Levin bill (H.R. 4453, 99th Cong., 2d Sess.).

BEST COPY AVAILABLE

The essence of the Udall proposal is that a Presidential primary with respect to an election of the President "may only be held" in the year of such election and "during the period beginning n the second Tuesday in March and ending on the second Tuesday in June" of such year. The bill then defines the term "Presidential primary" as "a primary, caucus, convention, or other means of selecting a candidate for the Office of the President of the United States, except that such term does not mean a national nominating convention of a political party." Finally, the Attorney General of the United States would be authorized to institute "any civil action for injunctive relief as may be appropriate to assure compliance with this Act."

As Representative Udall explained when he testified as to this proposal before the Task Force on Elections in 1984:[3]

This bill would simply limit the selection of delegates to national nominating conventions to a 90-day period beginning with the second Tuesday in March and ending the second Tuesday in June. That is all it does. It does not overhaul the Presidential primary system; it does not violate the constitutional prerogatives of the States and parties to determine how to select Presidential nominees.

It would make two small but important changes in the way we choose our Presidential candidates. First, the primary season would be limited to a specific period of time, eliminating the disproportionate influence of a few early primary states. Second, a shorter primary season would reduce the amount of campaign spending and relieve, to some extent, the boredom factor that is experienced by many vote[r]s over a prolonged campaign.

A co-sponsor of the Udall bill, Representative Conte, has further explained that:[4]

. . . this legislation does address three negative aspects of the Presidential selection process: The exaggerated role of the early primaries, the length of the campaign, and the cost of the campaign.

In my judgment, the proposed legislation is fully consonant with the principles and the provisions of the Constitution. It represents an exercise of Congressional power to enact laws deemed "necessary and proper" for carrying into execution the vested power of Congress (Article II, Section 1, Clause 4) to "determine the Time of chusing the [Presidential] Electors." It invades no exclusive power of the States; indeed, the States have neither the power nor the capacity to determine what is necessary to implement this timing determination. Nor does the proposed legislation, dealing only with the timing of the primaries and caucuses that lead to the choosing or election of the Electors, implicate any First Amendment rights of speech or association that may adhere to political parties or individual voters.

To begin with, the Constitution deals with the timing of federal elections in but two respects: (1) Article I, Section 4 gives Congress power to regulate the "Times," as well as the "Places and Manner," of holding elections for Senators and Representatives;[5] (2) Article II, Section 1, Cla ise 4 vests in Congress the power to determine "the Time of chusing the [Presidential] Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."[6]

We are concerned here, of course, only with the latter provision, "the Time of chusing [Presidential] Electors." But it is significant that the Framers, when dealing with the time for electing either the Congress or the Electros, gave the final power over time selection not to the States but to the Congress—the one body capable of assuring any degree of uniformity among the States in the timing of federal elections. And the reference in Article II, Section 4 to the day for casting the votes of the Electors being "the same throughout the United States" is some indication that the Framers recognized the need for national uniformity in setting the time for selecting a President.

But the Article II reference to the time of choosing Presidential Electors does not specifically address the modern phenomenon of primaries and caucuses in the States that precede the selection and formation of the Electoral College. We there-

---

[3] Hearing on H.R. 6054 before the Task Force on Elections of the Committee on House Administration (September 19, 1984), p. 6.

[4] Hearing, supra note 3, p. 8.

[5] Pursuant to that vested authority, Congress has provided: "The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3rd day of January next thereafter." 2 U.S.C. 7. The time for election of Senators is directly related to the time for electing Representatives. 2 U.S.C. 1.

[6] Congress has provided, 3 U.S.C. 1, that "The Electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President." As to the day on which Electors vote, see 3 U.S.C. 7.

BEST COPY AVAILABLE

fore must assume, as the Supreme Court assumed with respect to the primary elections that precede Congressional elections, that the Framers "did not have specifically in mind the selection and elimination of candidates for [the Presidency or the Electors] by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concedely within it." *United States* v. *Classic*, 313 U.S. 299, 316 (1941). But, as the *Classic* opinion continued,

> In determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended to be achieved by the Constitution as a continuing instrument of government. . . . If we remember that "it is a Constitution we are expounding," we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the constitutional purpose.

Classic then proceeds to read Section 4 of Article I in conjunction with Section 2 of that Article, which states that Members of the House shall be "chosen every second Year by the People of the several States."[7] Read together, these sections reveal one of "the great purposes which were intended to be achieved by the Constitution as a countinuing instrument of government." 313 U.S. at 316. That purpose, said the Court, is to secure "a free choice of representatives by the people . . . [by authorizing] Congress to regulate the manner of [such] elections." *Id.*, at 317. Thus, where a State, exercising its privilege in the absense of Congressional action, changes the mode of choice from a single step (a general election) to a two-step procedure (a primary and then a general election) and thereby makes "the primary and integral part of the procedure of choice, or where in fact the primary effectively controls the choice," *Id.*, at 318, Congress has power under Section 4 to regulate the "Times, Places and Manner" of holding primary elections in the several States. In sum, the authority of Congress given by Section 4 "includes the authority to regulate primary elections when, as in this case, they are a step in the exercise by the people of their choice of representatives in Congress." *Id.*, at 317. And all this regulatory power ensues despite the absence in Section 4 of any specific reference to primary elections.

The *Classic* decision also identifies an additional and affirmative source of Congressional power to regulate primary elections in light of the "great purpose" of Article I, Section 4. *Id.*, at 315. That source is the Necessary and Proper Clause, Article I, Section 8, Clause 18, which endows Congress with power to make "all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof." See *McCulloch* v. *Maryland*, 4 Wheat. 316, 420 (1819). By virtue of this clause, Congess has whatever legislative power it deems "necessary and proper" to carry into execution its vested regulatory power over Congressional elections, as vested by Sections 2 and 4 of Article I. Congressional regulations respecting such primary elections thus reflect what Congress deems "necessary and proper" to effectuate the constitutional promise of "the free choice by the people of representatives in Congress." *Classic*, at 316.

As Justice Black wrote in *Oregon* v. *Mitchell*, 400 U.S. 112, 120 (1970), citing the *Classic* decision, "the power of Congress to make election regulations in national elections is augmented by the Necessary and Proper Clause." The result is that Sections 2 and 4 of Article I, when read in tandem with the Necessary and Proper Clause, have consistently been viewed by the Supreme Court as constitutional authority for providing, by legislation, "a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley* v. *Holm*, 285 U.S. 355, 366 (1932).[8]

---

[7] The Seventeenth Amendment provides that the Senate "shall be composed of two Senators from each State, elected by the people thereof . . ."

[8] Section 4 of Article I allots to the States the power to regulate and prescribe the times, places and manner of holding elections for Senators and Representatives, but Section 4 then

Continued

BEST COPY AVAILABLE

In short, the Supreme Court has interpreted the Article I provisions as vesting in Congress sweeping powers to regulate all aspects of both general and primary Congressional elections in order to preserve "the free choice by the people of representatives in Congress." *Classic*, at 316. The critical and controlling factor that emerges from the Court's broad treatment of Congress' powers respecting Congressional elections is that the Court employs the same constitutional analysis, the same broad treatment of vested Congressional power, in dealing with Article II, Section 1. For that reason, there is no doubt in my mind that Congress has constitutional power to enact a law, such as proposed in the Udall bill, to establish a nationally uniform period of time in which to hold primaries, caucuses and conventions that have become integral parts of the Article II, Section 1 process of choosing Presidential Electors.

The key Supreme Court decision in this respect is *Burroughs* v. *United States*, 290 U.S. 534 (1934), which mirrors the later *Classic* decision in its constitutional analysis. *Burroughs* dealt with an application of the Federal Corrupt Practices Act to political committees organized for the purpose of improperly influencing the elections for Presidential Electors in two or more States. In holding that Congress has vested authority under Article II, Section 1 to regulate such practices, *Burroughs* rejected a narrow reading of Section 1 that would have confined Congressional power to the literal language—i.e., determining "the Time of chusing the Electors, and the Day on which they shall give their Votes." Such a literal and narrow reading of Section 1 was held to be "without warrant." 290 U.S. at 544.

Most importantly, *Burroughs* read this constitutional language as vesting in Congress the power to preserve the purity of Presidential and Vice Presidential elections, even as to matters impugning the integrity of the election process that might occur before the date established by Congress for "chusing the Electors." As the *Burroughs* Court explained, *id.*, at 545:

> The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.

The *Burroughs* opinion concluded, *id.*, at 547–548, by stating:

> The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone.

Thus by reading Article II, Section 1 in conjunction with the Article I Necessary and Proper Clause, the Court was able to interpret that Section 1 language as encompassing vast power in the Congress to preserve the integrity and the purity of the Presidential election processes. As noted by the Court more recently in *Buckley* v. *Valeo*, 424 U.S. 1, 90 (1976), *Burroughs* along with *Classic* stands for this proposition: "Congress has power to regulate Presidential elections and primaries."

The conclusion respecting the Udall bill is inescapable. In establishing a uniform period of time to hold primaries, caucuses and conventions that have been built into the process leading to the day set aside for "chusing the Electors," Congress would be exercising part of its vested power under Article II, Section 1 to preserve the integrity and purity of the Presidential selection process. It is for Congress alone to determine if a shorter primary period is appropriate or necessary to that end. If it is thought that a few very early State primaries create a disproportionate influence on the process leading to the ultimate election of Presidential Electors, that also is a matter solely for Congress to determine.

---

provides that "Congress may at any time make or alter such Regulations." It is from the latter provisions that Congress is vested with power to enact "a complete code for congressional elections." As explained by Mr. Madison, state regulations might violate the principles of equality or deprive the people of the right of suffrage, and "it was judged proper that it should be remedied by the general government." 3 J. Elliot's Debates on the Federal Constitution 367 (1876). Indeed, Madison indicated the intent was to have regulations that would be "uniform throughout the continent." *Id.*

BEST COPY AVAILABLE

There are, of course, ultimate constitutional limits to any Act dealing with the Presidential election processes, just as there are constitutional limits to any legislation passed by Congress. But those limits are reached only if a proposal, such as the Udall bill, encroaches on some area reserved by the Constitution for action by the States, or if it violates some specific guarantee of individual rights, such as those embraced by the First Amendment. Neither type of constitutional limitation is involved in the Udall proposal.

First, by setting a nationally uniform primary period, this proposal, to use the words of the *Burroughs* opinion, 290 U.S. at 544–545, "is confined to situations which, if not beyond the power of the state to deal with at all, are beyond its power to deal with adequately. It in no sense invades any exclusive state power." Fifty States cannot deal adequately with the problem of establishing a nationally uniform period for holding Presidential primaries, caucuses and conventions.

Finally, I am aware of no First Amendment rights of speech or associations that may be asserted as a barrier to establishing such a uniform period. Political parties and individual voters certainly have various constitutionally protected rights.[9] Without detailing what those rights are, it is fair to say that none of them guarantee that any political party or voter has a right to be heard at a particular time in a Presidential primary season, or at least during an especially early part of the season that Congress has found to be deleterious to the effective functioning of the Presidential selection process. And if there be any arguable impact on such rights, that impact is certainly minimal and incidental.

To repeat my conclusion, the Udall bill and the other three related bills before this Subcommittee are constitutional. If any of these bills be enacted, it would represent an exercise by Congress of its vested powers under Article II, Section 1 and under the Necessary and Proper Clause to preserve and protect the integrity and efficiency of the Presidential election processes.

Mr. SWIFT. Professor Gressman, thank you very much.

Mr. Durbin, with the Congressional Research Service, please proceed as you choose.

TESTIMONY OF THOMAS M. DURBIN, ELECTION LAW SPECIALIST, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. DURBIN. Thank you, Mr. Chairman.

Mr. Chairman, Mr. Thomas, majority and minority staff, Professor Gressman: it is an honor to be here, and I would just like to state preliminarily that, in accordance with Congressional Research Service policy, any testimony or statements will be objective and nonpartisan.

I have submitted a written statement that analyzes in detail the Presidential primary reform legislation now in this Congress and that touches upon some of the basic constitutional issues that should be addressed by this committee. I will briefly highlight some of the information that is in that report.

First I would just like to preface that remark with the observation that in the Presidential election area we are in a unique area. A Presidential election is not like a regular congressional election, where you have a primary, a possible runoff, and a general election. We are in an area where the name of the game is the selection of delegates in the primary process and the selection of electors in the then general election process. It is a very unique system.

---

[9] For a discussion of some of the constitutional restraints that States may encounter in seeking to regulate political party nominating methods, see Wiesburd, Candidate-Making and the Constitution: Constitutional Restraints on and Protection of Party Nominating Methods, 57 S.Cal.L.Rev. 213 (1984).

BEST COPY AVAILABLE

It is very complex. In the selection of delegates in the primary process, you are dealing with various aspects. You are dealing with national party rules. The Democratic Party has its rules for the selection of delegates; they have the Compliance Review Commission; and you are dealing with the Republican Party's rules, the national rules. You are also dealing with each State's individual party's rules—each State's Democratic and Republican Party rules—for the selection of delegates. And because of that, not only are you dealing with national party rules and State party rules, but you are also dealing with a State's election laws that have sometimes tried to bring about uniformity within that State as far as selecting delegates. So it is a very complex area. It is a complex area that is basically controlled by State election laws, by State party rules, and by national party rules.

So, for the Federal Government to now enter this nomination process, what are the parameters and what is the scope of authority that gives Congress the right to enter this area, and how far can it go?

There is no doubt—and I agree with Professor Gressman—the Congress has broad authority in this area. Under article II, section 1, clause 4, which is the provision that provides that Congress may determine the time of choosing Presidential electors, the day on which they shall give their vote. It gives Congress a lot of power to set times and to set dates.

The Supreme Court, as Professor Gressman has mentioned, in a line of decisions, has emphasized that power of the Federal Government, of Congress, to regulate not only congressional elections but also to regulate Presidential elections. As a matter of fact, the Supreme Court decisions have meshed the two terms "congressional elections" and "Presidential elections"; they call them national elections. You had the *Ex Parte Yarbrough* case in 1884; you had the *Smiley* v. *Holm* decision in 1932, *United States* v. *Classic* in 1941, *Burroughs* and *Cannon* v. *United States* in 1934, and more recently, *Oregon* v. *Mitchell* in 1970, and, of course, *Buckley* v. *Valeo* in 1976. Of course, in 1976, in the *Buckley* decision, that decision sort of summarized all these past opinions. In *Buckley*, it was a given fact that Congress had substantial constitutional authority to regulate national elections, Federal elections, and it really wasn't addressed by the *Buckley* Court because both sides had agreed that this is an area where Congress has a lot of authority, and Congress' authority over Federal elections was not contested.

So, again, in using the line of Supreme Court decisions, and article II, section 1, clause 4, which deals with setting the dates for choosing electors, Congress has broad authority over Presidential elections. Congress has broad authority to regulate the times and certain manners of Presidential primaries, such as some sort of a regional primary system which would set regional dates.

However, because this is such a complex area, because this is an area that the political parties, both on the national level and on the State level, have been so entwined and meshed in the process, you are entering a gray area here. You are entering an area where there are first amendment rights of speech, expression, and association.

BEST COPY AVAILABLE

There are two Supreme Court decisions that this committee should analyze and examine to see how those decisions may affect this Federal primary election legislation that is being proposed.

One is the 1975 Supreme Court decision of *Cousins* v. *Wigoda*. That dealt with the 1972 Presidential election in which there was a set of delegates selected to the Democratic National Convention that were elected according to the Illinois election statutes. What happened there was that the Democratic Party at that time had fairness rules that provided for minority participation, participation by women, and participation by youth. Those State election laws violated the Democratic National party rules. So what happened was that you had two sets of delegates being sent to the Democratic National Convention, one elected under Illinois election laws and the other elected through another step, the party process. The Democratic National Convention seated those delegates that complied with their rules but not those delegates that were elected according to the Illinois election statutes.

The Supreme Court, in upholding the seating by the Democratic National Convention of the delegates that were appointed outside of the Illinois election statutes, said that the National Democratic Party rules and regulations providing for delegates to the national nominating convention have primacy and supersede State election laws.

In another decision in 1980 was the *Democratic Party of the United States* v. *La Follette*. That dealt with the Wisconsin open primary. The Democratic National Committee had a rule that stated that you had to have Democratic Party affiliation in order to participate in any of its primaries. The Wisconsin open primary law provided for participation by all parties, and it did not require party registration or affiliation, so that you had a set of delegates being elected that violated the National Democratic Party's rules.

These delegates went to the national convention and actually were eventually seated. But a court suit proceeded. In that court suit, in the *La Follette* case, the U.S. Supreme Court stated that the Democratic Party could seat delegates according to its party rules and it could refuse permission to seat any set of delegates elected in a primary procedure, such as the Wisconsin open primary when the State election laws, violated national party rules. The Supreme Court also held that because of the first amendment right of association, national party rules are to be given primacy over State election laws that provide for the selection of delegates.

Now, in the *Cousins* case in 1975, the Supreme Court addressed the issue—it was a hypothetical issue at that time—but it said at this time we do not address the issue of whether or not Congress has the power to regulate parties or regulate the selection of delegates to the national conventions. We recognize the fact there is a first amendment issue, but we do not address that point in this case.

Now, when we have the primary legislation before Congress that we have now, we must try to find out how this legislation is going to mesh with state election laws, the national party rules of the Democratic and Republican parties, and each individual state Democratic and Republican Party Rules. How is Federal Presidential primary law going to mesh.

BEST COPY AVAILABLE

In looking at the legislation itself, there are three bills—H.R. 251, H.R. 3542, and H.R. 4453—that provide for some type of regional primary system. As long as those bills establish dates for the primaries, establish a number of regions, establish a precise number of Presidential primaries, and even the manner in which the primaries may be conducted—for example, how to get on the ballot, whether you need nominating petitions, signatures, et cetera—those are within the power of Congress to regulate. Those aspects of these bills are constitutional.

However, when the bills proceed to regulate more than State election laws, more than the dates of the primaries, and to regulate the party caucuses, then there is a regulation of the political party entities. Not only will you have Federal regulation of the State political parties but also you will have regulation of the national political parties which will then have to conform their rules to such Federal legislation.

But the question is, is there a first amendment problem here, and is this an interference with the first amendment rights or political parties because you would then regulate political party caucuses? Keep in mind, a substantial number of States elect delegates through caucus procedures or through county and State conventions. And in many situations, the caucuses and conventions are not even for delegate selection. Usually there are persons elected who may have leanings one way or the other, but caucuses or conventions may not be included in the delegate selection processes at the very early stages. You go from the county convention to a congressional district convention, where it may be clearer at that stage that it is for the selection of delegates. And then from the county convention you go to the statewide convention.

Now, at the statewide convention, you often have in both parties statewide delegates selected, party and elected official delegates elected, and bonus delegates elected. All of these stages make up the delegate selection process that has been refined in different ways by each political party.

If caucuses are to be included in the primary reform legislation, there may be a first amendment problem. Keep in mind that under the *La Follette* decision and the *Cousins* v. *Wigoda* decision the Supreme Court has held that any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherence, and the courts noted that States do not have a constitutionally mandated role in regulating and governing the task of national conventions to nominate Presidential and Vice Presidential candidates.

In the bill H.R. 1380, that would establish a window, this is obviously very close to the Democratic national rule, rule 10, that was to regulate the 1984 Democratic Presidential primary elections that established a window from the second Tuesday in March to the second Tuesday in June, giving exception to Iowa and New Hampshire. Obviously, Congress would have the authority to establish that window. However, to extend that to political party caucuses—for the same reasons we talked about political party caucuses in the regional primary proposals—it may pose a first amendment freedom of association problem and may overly interfere with the

BEST COPY AVAILABLE

traditional and historical timings of State political party caucuses, county conventions, and statewide conventions.

I want to just mention that the provisions in H.R. 251 that provide for voter registration and for a notation on the ballot whether delegates are committed or not would seem to be constitutional under Congress' broad authority to regulate national elections. I think that the *Oregon* v. *Mitchell* decision would support these provisions. That case dealt with such matters as the minimum voting age requirement and the minimum durational residency requirements for Presidential and Vice Presidential elections. And, in that decision, it was noted that Congress was fully empowered to make or alter State regulations in national elections and to supervise elections and to provide for voter qualifications.

There is one other provision in H.R. 251 which would be noted that would condition the eligibility to receive matching payments on an agreement of a Presidential candidate to agree to enter his name in at least one State primary in every region and notify the Federal Election Commission of which primary he intends to enter. This would seem to be constitutional under the reasoning in *Buckley* v. *Valeo* in 1976, or for the same reasons it upheld the public financing provisions and certain eligibility requirements of the public financing provisions in the Presidential primary and general elections. As we know in *Buckley*, the public financing provisions which provided for certain eligibility requirements, such as expenditure limitations, were constitutional on the ground that Congress could reform the electoral process under the general welfare clause and the necessary and proper clause. So I don't see any constitutional problems with those provisions.

Now, in ending my statement, I would just like to make one final statement. If you are going to enter into the caucuses, county conventions, or statewide conventions of the political parties to select delegates, there are two possible ways to do it. Obviously, one way is a constitutional amendment. But that may not be the most feasible way to do it.

The other way to do it, legislatively, is probably similar to some of your proposals which provide for aggregate limitations on contributions to congressional candidates from PACs. The way to do it would be to provide for some sort of contractual agreement with political parties—in other words, to provide for some sort of public financing or grants to not only the National political parties but also to the State political parties, and then to condition that public funding which would be either by grants or by some other type of appropriation, on the condition that they comply with the window or the regional primary system that you establish.

Obviously, we now have in the present Federal law such a provision that does provide for some public financing in the nomination process. For example, title 26 of the United States Code, section 9008, which is part of the Presidential General Election Financing Act, provides for funding for national conventions, and that is increased by inflation every four years.

Now, that type of public financing would essentially be a contractual agreement, that, if the political parties want this money, they would then have to comply with a window or regional system that you would establish. The eligibility requirements would be compa-

BEST COPY AVAILABLE

rable to the eligibility requirements and conditions that are set for Presidential candidates who received public funding. Or a comparable analogy could be made to some of the proposals before your committee that would provide for congressional public financing in congressional elections and establish certain conditions such as expenditure limitations in order to receive that funding. Such a system, obviously, would be voluntary, and it may not achieve, because of the voluntary aspect of it, the desired uniformity.

Thank you, Mr. Chairman, and Mr. Thomas.

STATEMENT BY THOMAS M. DURBIN, LEGISLATIVE ATTORNEY OF THE CONGRESSIONAL RESEARCH SERVICE—CONGRESSIONAL AUTHORITY TO REGULATE THE PRESIDENTIAL PREFERENCE PRIMARY PROCESS BY SUCH LEGISLATION

I. BACKGROUND AND HISTORY OF PRESIDENTIAL PRIMARIES

The United States Constitution does not authorize the establishment of political parties and primary elections.[1] The Constitution did not provide for any formal nominating procedures for President and Vice President outside of those provisions relating to Electoral College.[2] With the establishment of political parties,[3] the inadequacies of the Electoral College system of electing a President and a Vice President became manifested especially in regard to the nominating process.

In the first presidential election in 1789, there were no formal nominations and the Electoral College method for choosing a President and Vice President was used. In the presidential election of 1792, there was no attempt to challenge President Washington, but a political party unsuccessfully presented a challenge to Vice President Adams.[4] In the presidential election of 1796, a nominating system was developed by way of a congressional caucus of Members who would meet to nominate presidential candidates. The congressional caucus system was used for nominating presidential candidates since there was a need for limiting the number of party candidates and for unifying the electors of a political party. The caucus system of nominating presidential candidates had some serious limitations in that: (1) the nominating process was limited only to Members of Congress without significant input from non-congressional persons; (2) state influence was limited according to the numbers of its congressmen and even to the party affiliation of the congressman; and (3) Congress was a dominant force in presidential matters since the President was more likely to be responsive to the congressmen who nominated him than to the people.[5]

Later state-based legislative systems of nominating a presidential candidate were used in the 1928 election of Andrew Jackson, and they eventually replaced and eliminated the congressional caucus method of nominating presidential candidates. By 1840, the major political parties replaced the state-based legislative systems for nominating presidential candidates with national conventions which had delegates selected from various states to nominate presidential and vice presidential candidates. The national conventions provided for broader participation in the presidential and vice presidential nominating process by the electorate than the congressional caucus or the state-based legislative sytems. However, the nominating conventions of the major parties had their defects since (1) delegate selection procedures were not uniform and varied from state to state and (2) participation by rank-and-file party members was at a minimal level since party bosses and machines often determined delegate selection.[6]

---

[1] William Crotty, Presidential Nominating Procedures, History of Presidential Nomination Practices, vol. 1 (New York: National Municipal League, 1974), p. xix.

[2] See, generally, U.S. Const., art. II, § 1 and amend. XII.

[3] The Founding Fathers did not have a favorable attitude toward political parties. They were suspicious of them and saw them as possible threats to state government. When the new government was being formed, two competing parties developed, one of which favored the adoption of the Constitution and the other of which was against the adoption. The Federalist Party favored a strong central government and was comprised of merchants, shippers, and financiers, among others. The other party was the Anti-Federalist Party which opposed a strong central government and sought to preserve the sovereignty of the states. See, National Party Party Conventions 1831-1976, (Washington: Congressional Quarterly, 1979), p. 1.

[4] Id., National Party Conventions, supra, p. 2.

[5] William Crotty, supra, p. xiv.

[6] *Ibid.*

BEST COPY AVAILABLE

In the early twentieth century there was another movement to reform the presidential nominating process that centered around presidential primaries. Presidential primaries were considered as means for electing delegates to the national nominating conventions so as to eliminate or lessen the influence of party bosses and machines in the selection of delegates. The progressive movement desired to open up the presidential nominating process through the use of presidential primaries and to return to the people the selection of delegates to the national conventions.[7]

In 1904, Florida enacted the first presidential primary law which authorized political parties to choose all or some of their national convention delegates.[8] In 1905, the State of Wisconsin adopted a presidential primary law that provided for the mandatory direct election of national convention delegates.[9] The primary mover behind the enactment of the Wisconsin presidential primary statute was Wisconsin's progressive Republican Governor, Robert M. La Follette whose progressive delegation was rejected in a credentials dispute at the Republican National Convention in 1904. In 1906, Pennsylvania enacted a presidential primary statute which provided that candidates for delegate could have printed beside his or her names the name of the presidential candidate he or she would support at the convention. And Oregon in 1910 held a referendum to establish a presidential primary which would bind delegates to support the winning candidates, and by 1912, twelve states had enacted presidential primary laws.[10] This number increased to twenty-six by 1916. However, this number decreased over the next half century so that by 1968, only sixteen states and the District of Columbia had presidential primaries.[11] Between 1968 and 1980, the number of states holding presidential primaries increased to thirty-five, not including the presidential primaries held in the District of Columbia and Puerto Rico. In 1984, thirty-three states as well as the District of Columbia and Puerto Rico held presidential primaries.[12]

Generally presidential primaries may be classified according to four types: (1) delegate selection only; (2) advisory presidential preference; (3) binding, winner-take-all presidential preference, and (4) proportional representation presidential preference. In the first type, the delegate selection primary, the names of presidential candidates do not appear separately on the ballot, but rather the names of the delegates appear individually or by slate and usually identified by presidential preference. The second type of presidential primary, the advisory presidential preference, generally provides that the vote for presidential candidates is advisory only. This type of primary is used for the purpose of attaining an expression of sentiment and will of party voters as preferring a certain presidential candidate. In the third type, the binding, winner-take-all presidential preference primary, the results of the presidential primary generally bind the delegation to the national convention to the primary winner. And fourth, in the proportional representation presidential primary, the results of the presidential primary are used to allocate national convention delegates to presidential candidates based on the proportion of the vote they receive.[13]

The type of presidential primary that a state has may be determined by the state election laws of that state or by the party rules of the particular political party or by a combination of both state laws and party rules. In many states, the major political parties hold different types of presidential primaries in selecting delegates to the national nominating conventions.[14]

---

[7] Presidential Elections Since 1789, 2d ed., (Washington: Congressional Quarterly, 1979), p. 125.

[8] Id., National Party Convention, supra, p. 10.

[9] Id., Presidential Elections Since 1789, Presidential Primaries, supra p. 125.

[10] Ibid.

[11] William Crotty, supra, p. xiv.

[12] The following jurisdictions held presidential primary elections in 1984: Alabama, Arkansas (Democrats only), California, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi (Republicans only), Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina (Republicans only), South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wisconsin. See, generally, Joseph B. Gorman, 1984 Democratic and Republican National Conventions: Tentative Dates Of Presidential Primaries Or First Step In Caucus Convention Process Leading To The Selection Of National Convention Delegates In The Fifty States And Other Represented Jurisdictions (Washington: Library of Congress, Congressional Research Service Report, Dec. 8, 1982).

[13] *Nomination and Election of the President and Vice President 1980* (U.S. Government Printing Office, Washington, 1980), p. 135.

[14] Ibid.

BEST COPY AVAILABLE

With the growth in the number of presidential primaries came an awareness that the primaries had created certain problems such as, (1) increasing the length of the primary election period, (2) causing expense and physical and mental strain on the candidates, (3) the inability of candidates to campaign in the primaries of some states held on the same date which are not geographically contiguous or approximate, and (4) the difference and variations of state presidential primaries especially as to the manner of selecting and binding delegates.[15] There were several attempts by some states in the mid-seventies to establish regional primaries to aid candidates in the following ways: (1) in reducing their expenses, (2) in lessening physical and mental strain, and (3) in permitting them to concentrate on regional issues. Attempts to regionalize the presidential primaries were made by various states in the West (Idaho, Nevada, and Oregon), the South (Arkansas, Kentucky, and Tennessee), and in New England (Massachusetts, New Hampshire and Vermont) were generally unsuccessful. Other approaches to reform the presidential primary system have been at the federal level.[16]

II. CONGRESSIONAL PROPOSALS TO REFORM THE PRESIDENTIAL PRIMARY SYSTEM

Since 1911, hundreds of bills have been introduced in Congress to reform the presidential primary system, and most of these bills saw little legislative activity.[17] In recent Congresses, there have been four general types of legislation introduced relating to reform of the presidential primary system: (1) legislation to establish regional primaries, (2) legislation to establish four dates on which primaries would be held, (3) legislation to establish a direct national primary, (4) legislation to establish a commission to study the presidential nominating process, and (5) legislation establishing a window for such primaries between the second Tuesday in March and the second Tuesday in June. [See H.R. 1380, 99th Cong., 1st Sess.] [The regional primary proposals in the 99th Congress are: H.R. 251; H.R. 3542; and H.R. 4453.]

A. Regional Presidential Primary Proposals

In recent Congresses, the most popular proposal for presidential primary reform provides for a system of regional primaries. There are three types of proposals for regional presidential primaries. The first type would establish a series of six regional presidential primaries.[18] The primaries would begin on the last Tuesday in March and continue on the second and fourth Tuesday in April and May and end on the second Tuesday in June.[19] The primary ballot would indicate whether a delegate is committed or uncommitted to a candidate.[20] Presidential candidates would be required to have their names entered on the ballot of at least one of the state primaries in order to receive the matching payments for public financing under section 9037 of the Internal Revenue Code of 1954.[21] The six regions include not only the states but also the District of Columbia, the Canal Zone, Guam, Puerto Rico, and the Virgin Islands.[22]

---

[15] Id. See generally Presidential Elections Since 1789, 2d ed., supra at p. 127.
[16] Ibid.
[17] Ibid.
[18] See, H.R. 43, 98th Cong., 1st Sess. (1983); H.R. 105, 97th Cong., 1st Sess. (1981); *cf.* S. 2741, 94th Cong. 1st Sess. (1975). See also H.R. 251 (Rep. Bennett), 99th Cong., 1st Sess. (1985).
[19] H.R. 43, 98th Cong., 1st Sess., §3(b) (1983); H.R. 105, 97th Cong., 1st Sess. §3(b) (1981). See also H.R. 251 (Rep. Bennett), 99th Cong., 1st Sess. (1985).
[20] H.R. 43, 98th Cong., 1st Sess., §3(c)(2) (1983); H.R. 105, 97th Cong., 1st Sess. §3(c)(2) (1981). See also H.R. 251 (Rep. Bennett), 99th Cong., 1st Sess. (1985).
[21] H.R. 43, 98th Cong., 1st Sess., §4 (1983); H.R. 105, 97th Cong., 1st Sess. §4 (1981). See also H.R. 251 (Rep. Bennett), 99th Cong., 1st Sess. (1985).
[22] H.R. 43, 98th Cong., 1st Sess., §5 (1983); H.R. 105, 97th Cong., 1st Sess. §5 (1981). The fifty states, the District of Columbia and the territories are divided into the following six regions: See, H.R. 251, 99th Cong., 1st Sess. (1985).
(A) Region 1 comprises Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont.
(B) Region 2 comprises Delaware, District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.
(C) Region 3 comprises Alabama, Canal Zone, Florida, Georgia, Kentucky, Puerto Rico, Mississippi, North Carolina, South Carolina, Tennessee, and Virgin Islands.
(D) Region 4 comprises Iowa, Illinois, Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.
(E) Region 5 comprises Arkansas, Colorado, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.
(F) Region 6 comprises Alaska, Arizona, California, Guam, Hawaii, Idaho, Oregon, Nevada, Utah, Washington, and Wyoming.

BEST COPY AVAILABLE

The second type of regional primary would provide for a series of five primaries.[23] The primary ballot is to include names of presidential candidates who have received public financing funds.[24] One proposal would allow any presidential candidate to be excluded from the ballot of any regional primary who would file with the Federal Election Commission (FEC) an affidavit indicating that he is not or did not intend to become a candidate for nomination or election to the presidency.[25] This proposal would also provide that only sixty-five percent of the delegates may be chosen by the regional primary method, while the remaining delegates are chosen by the political party organizations of the state.[26]

Another proposal which provides for a five regional presidential primary system requires candidates to designate the names of individuals who are to serve as delegates of the candidates.[27] This proposal would award a candidate a number of delegates in proportion to the number of votes cast for him.

There are also provisions for the reimbursement by the FEC to the states for the costs in conducting primary.[28] Another proposal would provide that states may be reimbursed for the costs of converting to the regional presidential primary sysem from their former presidential primary systems.[29] The FEC is authorized in some proposals to prescribe the date on which the chief executive officer shall clarify the results.[30] And the FEC is required to consult and cooperate with state officials to assist them in conducting regional primaries.[31] The five regional-primary system proposals would also include the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.[32]

The third type of regional primary proposals provide for four regional presidential primaries which would divide the states, the District of Columbia, and the territories into four regions and would determine by lot the numerical order of each of the primaries.[33] Like the other regional presidential primary proposals, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam are included.[34]

---

[23] See, S. 1149, 97th Cong., 1st Sess. (1981); H.R. 3583, 97th Cong., 1st Sess. (1981); and H.R. 3905, 97th Cong., 1st Sess. (1981).

[24] S. 1149, 97th Cong., 1st Sess., § 3(e)(1)(1981); H.R. 3583, 97th Cong., 1st Sess. § 3(e)(1)(1981, and H.R. 3905, 97th Cong., 1st Sess., § 2(e)(1)(1981).

[25] S. 1149, 97th Cong., 1st Sess. § 3(g) (1981); H.R. 3583, 97th Cong., 1st Sess. § 3(g) (1981).

[26] S. 1149, 97th Cong., 1st Sess., § 4(a)(1)(2) (1981); H.R. 3583, 97th Cong., 1st Sess. 1 § 4(a)(1)(2) (1981).

[27] H.R. 3905, 97th Cong., 1st Sess. § 3 (1981).

[28] H.R. 3905, 97th Cong., 1st Sess. § 4 (1981); S. 1149, 97th Cong., 1st Sess., § 6 (1981).

[29] H.R. 3583, 97th Cong., 1st Sess. § 6 (1981).

[30] H.R. 3905, 97th Cong., 1st Sess. § 6 (1981).

[31] S. 1149, 97th Cong., 1st Sess., § 7 (1981); H.R. 3583, 97th Cong., 1st Sess., § 7 (1981); H.R. 3905, 97th Cong., 1st Sess., § 6 (1981).

[32] S. 1149, 97th Cong., 1st Sess., § 8 (1981); H.R. 3583, 97th Cong., 1st Sess., § 8 (1981); H.R. 3905 97th Cong., 1st Sess., § 8 (9181) The fifty staes, the District of Columbia and the territories are divided into the following five regions:

(A) Region 1 comprises Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Connecticut, New York, Pennsylvania, New Jersey, and Delaware.

(B) Region 2 comprises Michigan, Illinois, Indiana, Ohio, West Virginia, and Kentucky.

(C) Region 3 comprises the District of Columbia, Maryland, Virginia, North Carlina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, Florida, the Commonwealth of Puerto Rico, the Virgin Islands, and the Canal Zone.

(D) Region 4 comprises North Dakota, South Dakota, Minnesota, Wisconsin, Iowa, Nebraska, Kansas, Missouri, Oklahoma, Arkansas, Texas, and Louisiana.

(E) Region 5 comprises Washington, Oregon, Montana, Idaho, Wyoming, California, Nevada, Utah, Colorado, Arizona, New Mexico, Alaska, Hawaii, and Guam.

[33] S. 1336, 97th Cong., 1st Sess., § 3(b) (1981); H.R. 775, 97th Cong., 1st Sess., § 2(b) (1981).

[34] In S. 1336, 97th Cong., 1st Sess. § 5(3) (1981), the states, the District of Columbia, and the territories are divided into four regions as follows:

(A) Region 1 comprises Connecticut, Maine Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Delaware, Maryland, the District of Columbia, Virginia, North Carolina, South Carolina, and the Virgin Islands;

(B) Region 2 comprises Indiana, Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Alabama, Georgia, and Florida;

(C) Region 3 comprises Iowa, Illinois, Michigan, Minnesota, North Dakota, South Dakota, Wisconsin, Nebraska, Missouri, Arkansas, Mississippi, Louisiana, Kansas, Oklahoma, and Puerto Rico; and

(D) Region 4 comprises Montana, Alaska, Arizona, California, Hawaii, Idaho, Oregon, Nevada, Utah, Washington, Wyoming, Colarado, New Mexico, Texas, and Guam.

And in H.R. 775, 97th Cong., 1st Sess., § 3 (1981), the states, the District of Columbia, and territories are divided into the following four regions:

Continued

BEST COPY AVAILABLE

B. Four Dates For Presidential Primaries

One proposal would provide for the regulation of presidential primary elections in the states by requiring that each presidential primary held by a state shall be held within one year preceding the expiration of the regular terms of the President and Vice President and shall take place on one of four dates: (1) the second Tuesday in March, (2) the second Tuesday in April, (3) the second Tuesday in May, or the second Tuesday in June.[35] A political party may be eligible for a separate ballot in such primaries if the candidates for President and Vice President received at least ten percent of the votes at the last presidential election.[36] A candidate who does not receive at least ten percent of the vote in a particular primary would not be allocated any of the delegate votes. And delegates who receive ten percent or more of the presidential primary vote shall be allocated delegate votes on the first ballot at the national nominating convention of the political party. The number of delegate votes allocated to qualifying candidates are to be prorated on the basis of the candidate's proportion of the total number of votes cast for all candidates.[37]

This proposal would require that the national party delegate selection rules must be established and promulgated at least sixty days prior to the start of the delegate selection process but no later than the first of January of the presidential election year.[38] Delegates are to be prorated based on the eligible candidates' winning proportionate shares of the votes cast for all candidates in each of the presidential primaries. The delegates, moreover, are to be bona fide supporters of the presidential candidates to whom they are allocated and shall be bound to vote for such presidential candidates for the first ballot of the national nominating convention.[39]

This proposal would further provide that the Federal Election Commission prepare a tentative list of presidential candidates who (1) meet the constitutional qualifications for that office and (2) have general recognition as a candidate for President. Any person whose name is not on the FEC's tentative list may petition in writing to the FEC no later than the second Friday in January that his or her name be added. Any person may have his or her name removed from the tentative list by filing an affidavit of withdrawal stating that he or she does not intend to be a candidate. The final list of presidential candidates is to be issued no later than the Tuesday following the third Friday in January.[40]

Alternate filing requirements for the four presidential primaries are provided for candidates who are able to file timely petitions before the primaries which have signatures of qualified voters who are members of the candidate's political party equal in number to one percent of the total votes cast at the last presidential election.[41] Moreover, each state holding a presidential primary election may require that each candidate pay a $500 filing fee.[42]

C. Direct National Primary

[H.J. Res. 45 (Rep. Smith of Iowa), 99th Cong., 1st Sess. (1985)] Some proposals for reform of the present presidential primary system advocate a direct presidential primary election.[43] One bill would require that direct presidential primary elections be held throughout the United States on the first Tuesday after the first Monday in May of each presidential election year. For presidential candidates to be placed on the primary ballot, they would have to qualify [44] in the states and territories which

---

(a) The Northeastern region shall include: Maine, New Hampshire, Vermont Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, the District of Columbia, Puerto Rico, and the Virgin Islands.

(b) The Southern region shall include: Virginia, West Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas.

(c) The Midwestern region shall include: North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio, and Kentucky.

(d) The Western region shall include: Washington, Oregon, Idaho, Montana, Wyoming, California, Nevada, Utah, Colorado, Arizona, New Mexico, Alaska, Hawaii, and Guam.

[35] H.R. 60, 97th Cong., 1st Sess. § 2(b) (1981).

[36] *Id.*, § 2(c).

[37] *Id.*, §2(f)(1)(2).

[38] Id., § 2(g).

[39] Ibid.

[40] Id., § 4.

[41] Id., § 5(a).

[42] Id., § 5(d)(1).

[43] See, H.R. 41, 97th Cong., 1st Sess. (1981); H.J. Res. 70, 97th Cong., 1st Sess. (1981); and H.J. Res. 48, 98th Cong., 1st Sess. (1983); H.J. Res. 45, 99th Cong., 1st Sess. (1985).

[44] H.R. 41, 97th Cong., 1st Sess. §§ 2, 3 (1981).

BEST COPY AVAILABLE

are divided into five regions [45] by obtaining petitions containing signatures of registered voters of at least one percent for each region and by obtaining petitions containing signatures in each state territory in a number equivalent to the proportion that the state's or territory's voting age population is to the total voting age population of the region. The proposal would also allow a state to require a filing fee of $2,500 when petition forms are furnished and $2,500 when a candidate qualifies for a ballot position.[46] Also, political parties are not allowed to hold national nominating conventions for the purposes of nominating candidates for the offices of President and Vice President.[47]

Another proposal for the direct nomination of candidates for election to the offices of President and Vice President would provide for a constitutional amendment to do so.[48] The proposed amendment would provide that official candidates of political parties for President be nominated at a primary election by direct popular vote. To qualify for a ballot position, a candidate must file with the President of the Senate a petition signed by a number of qualified voters in at least seventeen states equal to one percent of the total votes cast at the last presidential election. The petition must be filed with the President of the Senate not later than the first Tuesday after the first Monday in April.[49] The time for the primary is required to be the same throughout the United States. The primary is supposed to take place on the second Saturday after the first Monday in July unless Congress would provide otherwise.[50] A runoff election would be required if no candidate received at least forty percent of the votes cast.[51] The proposal, moreover, provides that between seven and thirty days after the primary, each political party shall nominate and choose a vice presidential candidate.[52]

D. Commission on Presidential Nominations

Because of the many and varied presidential primaries among the states and the District of Columbia and Puerto Rico, more and more pressure has been put on Congress to reform the presidential primary process. In order to do so, a legislative proposal has been made to establish a twenty member Commission on Presidential Nominations to investigate and study the present system.[53] A report by the Commission is to be made to the President and the Congress within one year after the appointment of the members of the Commission which would include alternatives to the present system and recommendations regarding the best system.[54]

III. CONSTITUTIONAL AUTHORITY OF CONGRESS TO ENACT PRESIDENTIAL PRIMARY LEGISLATION

Even though the United States Constitution seems to leave the process of regulating presidential elections up to the states under article II, section 1, clause 2, which states, "[E]ach State shall appoint, in such manner as the Legislature thereof may direct, . . . [presidential] electors . . . .," broad powers are given to Congress to regulate such elections under other provisions of the Constitution. One constitutional basis is article II, section 1, clause 4 which grants Congress broad authority in enacting legislation regulating presidential elections including presidential primary elections. That provision provides: "The Congress may determine the time of choos-

---

[45] In H.R. 41, 97th Cong., 1st Sess., § 3(b), the five regions are listed as follows:
(1) East: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.
(2) Midwest: Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, Wisconsin, and West Virginia.
(3) Southeast: Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, Puerto Rico, South Carolina, Virginia, the Virgin Islands, and the Canal Zone.
(4) Southwest: Arkansas, Kansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
(5) West: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.
[46] H.R. 41, 97th Cong., 1st Sess. § 5 (1981).
[47] Id., § 6.
[48] See, H.J. Res. 48, 98th Cong., 1st Sess. (1983); H.J. Res. 70, 97th Cong., 1st Sess. (1981) (identical bills). See also H.J. Res. 45, 99th Cong., 1st Sess. (1985).
[49] Id., § 3.
[50] Id., § 5.
[51] Id., § 6.
[52] Id., § 7.
[53] S.J. Res. 10, 97th Cong., 1st Sess. (1981).
[54] Id., § 4(b).

BEST COPY AVAILABLE

ing [presidential] Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."[55]

The Supreme Court in *Burroughs and Cannon* v. *United States*[56] quite clearly recognized that the power of Congress to regulate presidential elections was quite broad especially when it was necessary to protect the purity and integrity of presidential elections. The court asserted:

> The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.[57]

In the *Burroughs'* decision, the court relied on its holdings in Ex Parte Yarbrough[58] which sustained the validity of certain corrupt practices statutes. While the indictments in the *Yarbrough* case related only to the election of a Member of Congress, the Supreme Court made no distinction between congressional elections and presidential elections so that the holdings in the *Yarbrough* case were broad enough to include both congressional and presidential elections.[59] Both the *Burroughs* and *Yarbrough* decisions make it quite clear that at least as far as preventing corruption in federal elections, Congress has broad power to regulate both congressional and presidential elections.

Congressional authority over presidential elections was also considered in the complex decision of *Oregon* v. *Mitchell*[60] in which there were five separate opinions. None of these opinions received a majority support by the Supreme Court Justices. The *Oregon* v. *Mitchell* decision concerned itself inter alia with the federal statutes that provided for uniform absentee registration and voting in presidential and vice presidential elections. In one of the opinions, Justice Black asserted that Congress has the power to enact such legislation since not only does Congress have the ultimate supervisory power over congressional elections but also Congress has the prerogative to oversee the conduct of presidential and vice presidential elections and to set the qualifications for voters for electors for those offices.[61] Congress also has broad powers to regulate national elections under the necessary and proper[62] clause of the Constitution which authorizes Congress to make all laws which shall be necessary and proper to carry out the other enumerated powers of Congress.[63] Justices Douglas, Stewart, Blackmun, and Chief Justice Burger in concurring holdings in *Oregon* v. *Mitchell* found that the fourteenth amendment's privileges and immunities clause[64] as well as its enforcement clause would empower Congress to enact legislation regulating federal elections which would include both congressional and presidential elections.[65] Justice Douglas emphasized: (1) that no parochial interest are necessarily involved in presidential elections (2) that durational residency requirements have the impermissible purposes or effects of denying citizens the right to vote, and (3) that such residency requirements deny citizens their privileges and immunities.[65]

Thus, the privileges and immunities clause of the fourteenth amendment and the section five enforcement provision of that amendment would seem to authorize Congress to regulate elections as they pertain to the election of the electors of the President and Vice President when the rights or privileges of voters are jeopardized. Arguably, Congress would have the power to protect the privileges and immunities of the electorate as guranteed by the fourteenth amendment by enacting legislation reforming the present presidential primary system so as to reduce the harmful ef-

---

[55] 290 U.S. 534 (1934).
[56] Id., 545.
[57] 110 U.S. 651 (1884).
[58] 290 U.S. at 545–546.
[59] 400 U.S. 112 (1970).
[60] 400 U.S. at 124.
[61] U.S. Const., art. I, § 8, cl. 18.
[62] 400 U.S. at 120. See, *United States* v. *Classic*, 313 U.S. 299, 315 (1941) in which the court upheld congressional power to regulate party primaries.
[63] U.S. Const. amend XIV, § 1. The privileges and immunities clause provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Cf. U.S. Const. art. IV, § 2.
[64] 400 U.S. at 291–293.
[65] 400 U.S. at 148.

BEST COPY AVAILABLE

fects of an unorganized nonuniforms system of presidential primaries. Moreover, it is arguable that, if Congress found that certain presidential primaries were denying poor or minority candidates equal protection of the laws by forcing them from the ballot because of stringent qualification requirements or by forcing them to campaign in diverse places on the same day with the objective of minimizing those candidates or excluding them from the electorial process, Congress may have sufficient power to enact remedial legislation under section five of the fourteenth amendment.[66]

In the 1976 supreme court decision on *Buckley* v. *Valeo*[67] which considered the constitutionality of various provisions of the Federal Election Campaign Act of 1971, as amended in 1974, the supreme court acknowledged the power of Congress to regulate not only congressional elections but also presidential elections, has been well established.[68] In examining the constitutionality of the public financing provisions for presidential elections, the Buckley court asserted that Congress has the power under the general welfare clause of article I, section 8, clause 2 of the Constitution, particularly in view of the enlargement of this power by the necessary and proper clause, to enact a public financing scheme for presidential elections as a means to reform the electoral process.[69] It would seem that a similar argument could be advanced that the general welfare clause and its enlargement of power by the necessary and proper clause of the Constitution would be sufficient to empower Congress to reform the presidential electoral process by the enactment of laws that would regulate presidential primaries.[70]

IV. CONSTITUTIONAL LIMITATIONS ON THE POWER OF CONGRESS TO REGULATE THE PRESIDENTIAL NOMINATING PROCESS

Despite the fact that Congress has the power under the Constitution to enact legislation regulating to presidential elections, the regulation of presidential elections has generally been left to the states. Article II, section 1, clause 2 of the Constitution directs the states appoint the presidential elections;[71] while article II, section 1, clause 4 directs that Congress shall have the duties of (1) setting the time for choosing presidential elections and (2) providing for day on which they are to vote for President and Vice President.[72]

Historically, the presidential election process has been a state process with dominant state attributes. The Electorial College is an example of this state dominance whereby voters cast their votes for a slate of electors which are based on the number of a state's Congressmen and Congresswomen who then meet, after their slate won, in the state capital of each state to cast their votes for the presidential and vice presidential nominees of their party.[73] In the Federalist paper, it was noted that it was the intention of the Framers of the Constitution to make the presidential selection process more of a function of the states than that of the National Government.[74]

Congress, no doubt, under article II, section 1, clause 4 of the Constitution has the power to regulate at least the timing of presidential primary elections and to enact legislation that would divide the county into regions for holding such elections at different times. However, one basic limitation on legislative power to regulate the presidential election process is the first amendment right of association which is guaranteed to political parties and their members. The freedom to associate with

---

[66] 400 U.S. at 134–144.

[67] 424 U.S. 1 (1976).

[68] The *Buckley* court noted that the constitutional power of Congress to regulate federal elections is well established and was not questioned by any of the parties in the case. *Id.*, 13. See also, *Smiley* v. *Holm*, 285 U.S. 355 (1932); Ex Parte Yarbrough, 110 U.S. 651 (1884); *United States* v. *Classic*, 313 U.S. 299 (1941); and *Burroughs and Cannon* v. *United States*, 290 U.S. 534 (1934).

[69] Id., 90.

[70] Id., 90–91.

[71] U.S. Const. art. II, § 1, cl. 2 states. "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress."

[72] U.S. Const. art. II, § 1, cl. 4 provides: "The Congress may determine the time choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States."

[73] U.S. Const. art. II, § 1; amendment XII; and amendment XX. See also, Who Should Elect The President? (Washington: League of Women Voters of the United States, 1969) pp. 7–12.

[74] The Federalist, No. 68 (A. Hamilton); see, *Kusper* v. *Pontikes*, 414 U.S. 51, 57 and n. 11 (1973).

BEST COPY AVAILABLE

others for the common advancement of political beliefs and ideas is a form of activity that is protected by the first and fourteenth amendments of the Constitution.[75]

In a 1981 Supreme Court decision in *Democratic Party of the United States* v. *Wisconsin ex rel. La Follette*, a national political party's refusal to seat state delegates who were elected in an open primary in a procedure that was violative of the national party's rules, was held to be permissible.[76] For the 1980 Democratic National Nominating Convention, the Charter of the Democratic Party provided that the delegates to the convention be chosen through procedures in which only members of the party can participate, and the delegate selection rules provided that only those who wished to affiliate publicly with the Democratic Party may participate in the selection of delegates to the national convention.[77] The election laws of the State of Wisconsin provided for an open primary which allowed voters to vote in a party presidential primary without regard to party affiliation and without requiring a public declaration of party preference. According to the election laws, the delegates from Wisconsin to a national convention must vote at the convention in accord with the result of the open presidential primary election.[78] The Democratic National Party indicated that the delegates who were bound to vote according to the results of the open primary, would not be seated at the national convention. A suit was brought in the Supreme Court of the State of Wisconsin which held that the open primary system of selecting delegates to the national conventions was constitutional and binding upon the Democratic National Party and that the state's delegates could not be disqualified from being seated at the national nominating convention.[79]

On appeal to the United States Supreme Court, the decision by the Wisconsin Supreme Court was reversed. The Supreme Court held that Wisconsin could not constitutionally require that its delegates be seated at a national party's national nominating convention.[80] The Court concluded that a national party and its members have a constitutionally protected right of political association under the first amendment for the purpose of advancing shared beliefs which are protected by the fourteenth amendment from any infringement by a state.[81] The freedom to associate with others for the common advancement of political beliefs and ideas by membership in a political party is a form of activity that is protected by the first and fourteenth amendments of the Constitution.[82] And any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents.[83] And states do not have a constitutionally mandated role in regulating and governing the task of the national conventions to nominate presidential and vice presidential candidates.[84] And, in determining the qualifications and eligibility of delegates to the national conventions of political parties, no primacy is to be accorded to a state's election laws over a national party's rules.[85] Consequently, a state cannot constitutionally compel a national party to seat a delegation to its national nominating convention that is chosen in a way that violates the rules of the national party.[86] And state interests in preserving the overall integrity of the electoral process in providing secrecy of the ballot, in increasing voter participation, and in preventing harassment of voters do not justify a state's intrusion into the associated freedom of members of national political parties.[87]

Since states can neither constitutionally regulate the way in which national parties conduct their national nominating conventions nor compel national parties to seat certain delegations contrary to such parties' rules, it is questionable whether or to what extent Congress can enact legislation outside a constitutional amendment, regulating certain aspects of the national nominating conventions such as the seat-

---

[75] *Democratic Party of U.S.* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 121-122 (1981). See also, *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973).

[76] *Id.*, 126.

[77] *Id.*, 109-112.

[78] Wis. Stat., tit. II, chs. 5-12, § 5.37(4), 5.60(8), 8.12(3) (1977).

[79] *State ex rel. La Follette* v. *Democratic Party of United States of America*, 93 Wis. 2d 473, 525-526, 287 N.W. 2d 519, 543 (1980).

[80] 450 U.S. at 126.

[81] *Id.*, 121. Cf. *Cousins* v. *Wigoda*, 419 U.S. 477 (1975) which held that a state may not compel a national party to seat a delegation which is chosen in a way that violates the rules of the party since the party and its adherents enjoy a constitutionally protected right of association.

[82] 450 U.S. at 121-122. See also, *Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973).

[83] 450 U.S. at 122.

[84] 419 U.S. at 489.

[85] Id., 491.

[86] 450 U.S. at 126.

[87] 450 U.S. at 121, 125, n. 29, 126.

BEST COPY AVAILABLE

ing of delegates. Since federal election laws generally have not been applicable to the national conventions except for some campaign finance provisions,[88] the Supreme Court has not had occasion to determine whether Congress has the constitutional power to enact legislation that would dictate to the national parties as to how they are to run their national conventions.[89]

Arguably political parties are protected against statutory regulations of their own internal affairs whether by state or federal law under the first amendment right of freedom of association which would include the rights of individuals to engage in the association for the advancement of beliefs and ideas.[90] This right of freedom of association of political parties is not absolute and is subject to reasonable governmental regulation and limitation, the reasonableness of which is based on certain first amendment balancing tests such as, (1) "compelling interests," (2) "too broadly drawn," (3) "overbreadth," and (4) "less drastic means."[91] Legislation which would regulate the internal affairs of political parties would have to be analyzed for any infringement on the freedom of association by examining (1) whether the legislative interests in such regulation are legitimate in that they are the types of interests that the government may be involved in and (2) whether the legislative interests are compelling or substantial when balanced against the first amendment associational rights of the national political parties.[92]

Congressional legislation, like the proposals in the 97th, 98th and 99th Congresses outside of those that propose amendments to the Constitution, that would attempt to regulate any internal affairs or procedures of the national political parties such as, (1) the manner of selecting delegates, to national conventions, (2) the rules for seating such delegates, and (3) the rules for binding delegates as to the candidates for whom they may vote, would raise first amendment issues. Such legislation would have to be analyzed as to (1) whether the federal government interests in regulating the internal affairs and procedures of national parties are legitimate in that these are interests that Congress may constitutionally pursue and (2) whether they are compelling and substantial governmental interests when balanced against any infringement of the associational freedoms of national political parties by legislation that would regulate their internal affairs.

For example, congressional legislation that would require delegates to a national convention to be bound for a certain number of ballots or until a candidate receives less than a certain percentage of the delegate vote or until the delegates are released by a candidate, may interfer with the rules of the national political parties and may violate their first amendment associational rights. Also congressional legislation which would effectively eliminate the need of the national political parties for holding national nominating conventions may infringe also on such associational rights. And congressional legislation that would apportion delegates to the national nominating conventions based on the results of presidential primaries may conflict with the rules and regulations of the national parties and consequently pose first amendment association problems.

Congress has the power under the Constitution to regulate certain aspects of the presidential nominating process such as the time and date of elections.[93] However, Congress' power in this area may be limited if legislation were to encroach upon the internal affairs of national political parties in violation of their first amendment associational rights.[94]

---

[88] See, for example, 2 U.S.C. § 437 relating to reports on convention financing.

[89] 419 U.S. at 483, n. 4. The Supreme Court asserted in *Cousins* v. *Wigoda* that: "... we intimate no views upon the merits of such questions as: (1) whether the decisions of a National Political Party in the area of delegate selection constitute state or governmental action ... (2) whether national parties are subject to the principles of the reapportionment decisions, or other constitutional restraints, in their methods of delegate selection and allocation ... and (3) whether to what extent national political parties and their nominating conventions are regulable by, or only by, Congress. Ibid.

[90] See, generally, Note, Freedom of Association And The Selecting of Delegates to National Political Convention, 56 Cornell L. Rev. 148, 152-160 (1970). See also, *Williams* v. *Rhodes*, 393 U.S. 23, 38 (1968).

[91] See, The Constitution of the United States of America, Analysis And Interpretation, Sen. Doc. No. 92-82 (Washington: U.S. Govt. Printing Office, 1973) pp. 966-984; and see 1980 supplement, pp. S106-S109.

[92] Id., 56 Cornell L. Rev. 158 (1970).

[93] U.S. Const., art. II, § 1, cl. 3, supra.

[94] Cf., *Williams* v. *Rhodes*, *supra*, 393 U.S. 30-34, 38, 41 (1968).

BEST COPY AVAILABLE

V. CONSTITUTIONALITY OF THE PRESIDENTIAL PRIMARY REFORM LEGISLATION BEFORE THE 99TH CONGRESS: H.R. 251; H.R. 1380; H.R. 3542; AND H.R. 4453

It would seem that Congress, under its constitutional authority to regulate presidential elections, would have the power to enact a law establishing a regional presidential primary system. Congress it seems has the power to determine the dates of primaries, the precise number of presidential primaries, the number of regions for such primaries, and the manner in which a regional primary is chronologically first. Accordingly, these provisions in the regional presidential primary legislation in the 99th Congress would appear to be constitutional. [See, e.g. H.R. 251, § 3(a), § 5; H.R. 3542, § 3(b), § 6; and H.R. 4453, § 2(b)(c).]

However, the constitutional authority of Congress to regulate state political party caucuses which select national convention delegates is less clear due to the First Amendment rights of political parties, such as freedom of speech, expression, and association.[95] Under the *La Follette* decision in 1980, the Supreme Court held that any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents and that states do not have a constitutionally mandated role in regulating and governing the task of the national conventions to nominate presidential and vice presidential candidates.[96] Accordingly, legislation that would regulate state political party caucuses should be closely examined as to the First Amendment constitutional issues that are similar to those that were addressed in the 1980 *La Follette* decision. [See, e.g., H.R. 3542, § 3 relating to regional primary elections and caucuses; H.R. 1380, §§ 1 and 2 relating to primaries, caucuses, or conventions; H.R. 3542, § 3 relating to regional primary elections and caucuses; and H.R. 4453, § 2(a)(b) relating to inter-regional primary elections and caccuses.]

The provision that would simply establish a "window" requring that presidential primaries occur between two dates such as between the second Tuesday in March and the second Tuesday in June during a presidential election year, would seem to be within the constitutional authority of Congress under its power to regulate presidential elections. However, to extend this legislation to cover the timing of political party caucuses may pose First Amendment freedom of association problems since such legislation may overly interfere with the traditional and historical timings of state political party caucuses and conventions. [See H.R. 1380, §§ 1 and 2 relating to a "window" for presidential primaries, caucuses, or conventions.]

The provisions providing for voter registration and for a notation on the ballot whether delegates are committed or not would seem to be constitutional under Congress' broad authority to regulate national elections under Article II, § 1 and the Necessary and Proper Clause of the Constitution. In *Oregon* v. *Mitchell*, Justice Black concluded that Congress under such constitutional provisions was fully empowered to make or alter state regulations in national elections, to supervise such elections, and to provide for voter qualifications.[97] [See, e.g., H.R. 251, § 3(c).]

The provision that would condition the eligibility to receive matching payments on an agreement of a presidential candidate to: (1) agree to enter his name in at least one state primary in every region and (2) notify the Federal Election Commission which primary he intends to enter, would seem to be constitutional for the same reasons that the Supreme Court in *Buckley* v. *Valeo* upheld the public financing provisions and certain eligibility requirements for such public financing in presidential primary and general elections.[98] According to the Buckley Court, the public financing provisions which included certain eligibility requirements such as expenditure limitations were constitutional in that they were means by which Congress could reform the electoral process under the General Welfare Clause of Article I, § 8 and could decide which expenditures will promote the general welfare of the United States.[99] [See, e.g., H.R. 251 § 4 which would add another requirement for eligibility to receive primary matching payments for presidential candidates.]

The provisions in the 99th Congress legislation regulating presidential primaries that concern such matters as: enforcement by the Attorney General, the promulgation of regulations by the Federal Election Commission, clarifying definitions, and the effective date would not seem to pose any constitutional problems.

---

[95] A "caucus" is defined as: "A meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the nomination of candidates for office." Black's Law Dictionary, 5th ed. (1979), p. 199.

[96] 450 U.S. at 121-122; 419 U.S. at 489.

[97] 400 U.S. at 122-123.

[98] 424 U.S. at 90-92. See 26 U.S.C. §§ 9001-9012 (presidential elections campaign fund for the general election) and 26 U.S.C. §§ 9031-9042 (presidential primary matching payment account).

[99] 424 U.S. at 92-93.

BEST COPY AVAILABLE

Mr. SWIFT. Thank you very much.

In trying to feed back to you some things I understood and some inferences I made, to be sure they're accurate, let me begin with straw votes.

Professor Gressman, you indicated that the justification for Congress being able to regulate primary elections was because they led directly to the election of the President itself. Some States have either straw ballots or what are called beauty contests. No delegates are elected. It is just kind of a popularity contest.

Under your analysis, would Congress have any authority to proscribe those in any fashion?

Professor GRESSMAN. Time-wise or otherwise?

Mr. SWIFT. Yes.

Professor GRESSMAN. No, I do not think they would. I say that because the essential constitutional nexus involving the proposals now under consideration is—and I quote from the Supreme Court's decision in Classic—that where State law has made the primary—let's substitute caucus or convention—where State law has made that event an integral part of the procedure of choice, choice by the people, or where, in fact, the primary effectively controls the choice of people, then the right of the electors or the voters to have their ballots counted in the process is protected and is protectable by Congress.

So I suggest that that is the essential predicate of the constitutionality of the proposals now under consideration; that is, as I read these, they seek to contro' only the timing of some event that has, by State law, been made an integral part of the election process. I would think that the type of popular straw vote that you mentioned would not have been made by the States an integral part of that selection or election process.

Mr. SWIFT. Mr. Durbin.

Mr. DURBIN. I agree with that. I feel that to regulate the straw vote in such an early part of the process, that you really would be regulating first amendment free speech, expression and association rights. It is just too indefinite, and that part of the process is not even regulated by State election statute, so that the Federal statute could not then preempt State law.

Mr. SWIFT. You did not have an opportunity, either of you, to study this because it is a proposal made earlier in this hearing by Mr. Caddell, but he suggested weighting the votes at different times throughout the process. Now, I gather from both of your testimony, that Congress would certainly be within its rights to set the dates.

Would it also be constitutional to weight or mandate that those votes be weighted differently at different times in the process? If you haven't had sufficient time to study that, that's an acceptable answer. We might ask you to fill in the record.

Professor GRESSMAN. Well, preliminarily I would say that that might raise some problems of equality in the voting, almost on an equal protection basis, since the right to vote is generally considered to be of equal value. The one man, one vote principle might be violated by giving some voters more weight than others, even at that early stage in the selection process. So I would have a serious question about that kind of weighted primary.

BEST COPY AVAILABLE

Mr. DURBIN. I would have a problem because it's a Federal statute. It would be a violation of one man, one vote.

However, we do have a violation of one man, one vote in the way the delegates are selected. We have bonus delegates whereby a State is given extra votes at a convention because of its performance 4 years earlier. There have been some Federal Court decisions on that challenge, where certain States have said this is a denial of equal protection.

For example, you had *Georgia* versus the *National Democratic Party*, *Bodie* versus the *National Democratic Party* in 1971, and then the *Ripon Society* versus *National Republican Party* in 1976. All of those cases challenged the delegate selection rules on the grounds of denial of one man, one vote and equal protection. But the Federal Courts did not agree and said that it was not a denial of one man, one vote, because they said it was permissible for political parties to award bonus delegates to some States. And because of the particular nature of political parties, the Federal Courts found that it was permissible to have some deviations from one person, one vote and to reward certain States with extra delegates because of past performances.

However, I don't think that these principles would apply in your situation because you're dealing with a Federal statute and then that statute could be attacked under the equal protection clause on the one person, one vote standard.

Mr. SWIFT. I yield to the gentleman from California.

Mr. THOMAS. Thank you, Mr. Chairman.

What about the possibility of unconstitutionality not under equal protection or one man, one vote, but freedom of association, in terms of weighing parties' delegates in one State differently than parties' delegates in another State, where the party would not wish to do that. If the party wants to structure itself in terms of bonus votes, it can, in rewarding or punishing various performances within States, that's clear. But can the Federal Government then tell the folks in California, Democrats or Republicans, that given the date you're going to hold your primary, you either get a full delegate or a delegate-and-a-quarter or three-quarters of a delegate? Wouldn't that then move into the freedom of association area, where I think the parties have tremendous constitutional protection?

Mr. DURBIN. I agree with that.

Mr. THOMAS. Therefore, Pat Caddell's suggestion that you could weight, on the basis of when the primary was held, leaving the choice up to the State, nevertheless I think is unconstitutional and the relationship with the political parties under freedom of association.

Do you agree with that?

Mr. DURBIN. I agree with that.

Professor GRESSMAN. I would certainly agree with that.

I would say too, that as long as you confine your legislation to the timing, be it by window or a nationally uniform date, you are not implicating any freedom of speech or association by the political parties or the voters. I think the voters or the political parties do not have any constitutional right to have their vote or their voice heard on a particular day in the national election process.

BEST COPY AVAILABLE

When they do have a right involved is when you begin to try to control the manner or the process by which the delegates may be selected. And when you get into weighted voting or determining the propriety of the selection processes within a political party, then you do get into constitutional problems.

But I thought one of the advantages of most of the bills that are under consideration is that they do limit, very severely, congressional control to mere timing, and that comes squarely within your constitutional authority. I think it implicates no first amendment freedoms of any sort.

Mr. THOMAS. Let me ask you a slightly different question, a question of timing. That is, do both of you feel that there is relatively equal weight constitutionally to the Congress providing the timing on, one, a window, in which a State can determine when it wants to have its primary, or two, a regional structure in which the regions are preassigned, or three, a rotational procedure in which no one for sure knows when it is going to occur and it is subject to movement.

Now, my concern is—I think the first one there's no problem with at all, the second one, probably not—but the third one, when you get into this business of rotation, again I think you get into the freedom of association aspect. Would you comment on the gradation of that constitutionally, or is there, in your mind, a gradation?

Professor GRESSMAN. Well, I certainly would agree that the first suggestion of a uniform period of time presents no associational problems of any sort. I guess the second one you mentioned was the regional——

Mr. THOMAS. Would be assigned regions, that Congress and the legislation would assign you a region.

Professor GRESSMAN. Right. I don't think that presents any constitutional problem, either. Because, I think, there is a great deal of discretion given to Congress by the necessary and proper clause to establish the time of holding national elections, as you in the Congress deem necessary and proper, and that means appropriate, and that means according to your political wisdom. Therefore, the States have no say in the timing of any election process of national scope.

Now, we get into——

Mr. THOMAS. That analysis then would extend to Congress' ability to also set up a random rotation procedure, which would be timing——

Professor GRESSMAN. Well, I think there might be some problems there. If it could be shown that this gives some States or some voters a kind of greater weight, perhaps——

Mr. THOMAS. Dr. Gressman, the argument has been that the reason you go to the random selection in order is, in fact, if you had a regional permanent structure, that would give extra weight. But on a random basis, then the weight would be distributed equally on the basis of selection.

Mr. Durbin, do you have any comments on that?

Mr. DURBIN. Basically, each one of those does establish a timeframe. That I have no problem with. When you only state the times in which delegates are to be selected, and if you leave it to the timing, and you state that if any States are going to have Presi-

BEST COPY AVAILABLE

dential primaries, you either have them in a window or you have them in the regions, or you have them in this rotational basis, fine; there would then be no problems.

But, now, what happens is that you cannot dictate, under the first amendment, to the political parties that they have to use that mechanism to select their delegates to the national convention. So what you are really creating are maybe regional Presidential preference primary beauty contests in the parties. If the parties wish, they may find it such a good system that they may wish to comply with the system and do it that way, or they may go outside of the system and select their delegates in the way they want to and then let the voters express their wishes through a Federal advisory Presidential preference primary system.

Keep in mind, a lot of primary systems in the past that have occurred, that have had importance, were advisory primaries rather than primaries whereby you selected all of the delegates or a prorated amount of the delegates.

Mr. THOMAS. So basically what you're saying is that Congress can lead the parties to the water but it can't make them drink?

Mr. DURBIN. Yes. The first amendment problems are serious there.

Professor GRESSMAN. If you limit this thing to timing, even on a rotating regional basis. I would also suggest that you would be balancing this great power of Congress to control the timing of the electoral processes as against any possible first amendment invasion.

I would suggest that the difficulty you have in identifying the right of the voters in the rotational system would indicate that perhaps, when you put that factor into the balance, the effect, if any, on the voters' or the parties' association or speech rights would be considered incidental and insufficient to overcome the exercise by Congress of its vast constitutional authority.

Mr. SWIFT. The gentleman has to leave. Would you care to ask any additional questions at this point?

Mr. THOMAS. No, Mr. Chairman. I just want to thank you very much, because as we get into this, we sometimes get carried away with the idea that, gee, if it's good, then this is going to be better, and we do not keep a string back to the Constitution, as was indicated by this morning's testimony, which sounded intriguing but at that time I thought unconstitutional.

I appreciate the support as we go through on this. Thank you very much for your testimony. I am sorry I have to leave.

Mr. SWIFT. I just have a couple of questions.

Did I understand you to say, Mr. Durbin, that—you didn't say this, but I inferred it. Do I infer correctly that, given the sequence of Supreme Court decisions and so forth, we don't know if Congress can supersede party rules, or did you subsequently make it fairly clear that, in fact, they found the party rules supersede Federal law? You clearly said they supersede State law.

Mr. DURBIN. Because there is not a Federal statute in this area, obviously the Supreme Court has not spoken. They have only addressed the State laws. But they have been very clear in those two decisions—the *Cousins* and *La Follette* decisions—that the primacy of party rules supersedes State election laws that try to regulate

BEST COPY AVAILABLE

the selection of delegates because of the first amendment right of association.

Mr. SWIFT. So that you would suggest we would be getting into questionable areas, where a constitutional objection could well and perhaps successfully be raised if we tried to supersede party rules?

Mr. DURBIN. Yes; I do.

Mr. SWIFT. We have two great concerns that have driven this whole thing—the primary in New Hampshire, the caucuses in Iowa. Did I hear you correctly to say that it is clear we could put the New Hampshire primary back into a window, but not so clear—or did you say we just could not deal with the Iowa caucuses? Or did I misunderstand you altogether?

Mr. DURBIN. As long as it is a State election statute that would regulate the primaries, such as New Hampshire—and it is my impression that there is a State election statute that regulates Iowa caucuses—Federal law could preempt State law. But what could happen is that if the Federal law preempted the State law that regulates the Iowa caucuses, what would prevent, say, the Democratic Party and the State Democratic Party from establishing their own rules outside of the Iowa election law that would be different from obviously the Iowa election law and the Federal law? Whatever Federal and State election laws that would exist, and the political parties could select their delegates in another procedure. So it would seem in that scenario, that the primacy of the national party rules and the State party rules would supersede the State election laws and obviously would conflict with the Federal law.

Mr. SWIFT. But no question that we have the right to supersede State law establishing caucuses and so forth?

Mr. DURBIN. That's right. You may regulate State law, no problem.

Mr. SWIFT. Now, if we were to pass a law creating this window, and either of the national parties were to decide they wanted to hold a primary or caucus outside of that window, you're suggesting we have no control over that?

Mr. DURBIN. You have control of a primary whereby voters can go to the polls and make a selection of the Presidential candidate they prefer on certain established days.

Mr. SWIFT. We clearly have precedence over party rules on the timing of a primary?

Mr. DURBIN. That's right.

Now, if the party decides to go outside of that primary and just use that primary as an advisory mechanism to them in the selection of their delegates, and then select their delegates through a convention proceeding or a caucus proceeding, or a statewide convention, whatever, they seem to have that right under the first amendment to do so.

Mr. SWIFT. Professor Gressman, would you care to address that point?

Professor GRESSMAN. Well, I think, as far as affecting State rules and party rules, if Congress exercises its unquestioned power to set a time for holding any kind of an election that is part of this Presidential selection process, then I think any State or party rules have to bend. For example, you have had in effect, now and for many years, a provision that says the electors for the Presidency

BEST COPY AVAILABLE

shall be held in each State on the Tuesday next after the first Monday in November in every fourth year.

Now, to the extent that any State had any different ideas in mind, be they party rules or caucuses or whatever, they have to bend to that establishment of a uniform date for the general election. By the same token, if you have, as I think you do, the power to establish a uniform date for a Presidential primary or a caucus, I suggest that any State rule or party rule to the contrary, as far as the date is concerned, would have to bend by virtue of the preemption that Congress has established in that connection.

I don't think this setting of a date goes very far into implicating any first amendment rights of the parties or the voters.

Mr. SWIFT. I'm not sure you two are in disagreement on that. I think you may have said it differently—or is there a little area of disagreement?

Mr. DURBIN. I think that when you get into the electoral college, you're dealing with the general election, which is all the Founding Fathers really thought of when they created the Presidential election process. The provisions dealing with the electoral college basically provide that the legislatures of the States may select the manner in which the electors are elected.

Well, for the sake of practicality, because we are really a two major party system, obviously the State legislatures in most of the States turn over the process to each of the major political parties to elect electors in any way they want to. So, obviously, the electors that appear on the general election ballot are going to be supportive, in most cases, of the Presidential candidates that are nominated at the national conventions.

That part of it—you know, the Federal statute could change that part of it. But when you get into the nominating processes—and the nominating process is really the selection of delegates—when you get into that, you are really dealing with a party structure. You are dealing with a party entity. A party entity, as the Supreme Court in a number of instances has said, has first amendment freedom of association, free speech, and expression rights. So I think when you would dictate to a political party how to select their delegates, you are entering into a gray area.

Now, let me put out another scenario. This often happens on a State level, when State election laws are passed. The majority party dictates to the minority party the way these are to run—the dates of the primary, the dates of the selection of delegates, the dates of the caucuses. This has often been a problem.

Now, in California, for example, in the selection of delegates, in each of the Presidential election years before the selection of delegates, each party will propose an election statute. Then the assembly adopts that election statute that is drafted by each party, so there is not that conflict. But I propose to this subcommittee, do you want a majority party, whichever party it would be, to dictate the way in which the selection of delegates is to occur to a minority party? That's the problem that you would have in this area. It is an associational problem.

You can regulate dates, and if the parties wish to comply, then they could be bound by that Federal statute. But I think it has to be a voluntary binding.

BEST COPY AVAILABLE

Mr. SWIFT. If I understand what you both have told me so far, we can set the date, and we can supersede State laws in that regard. What you're telling me is, theoretically, a party could hold its own primary election at some other time, right? Now, exactly how they do that——

Mr. DURBIN. Let me just comment on that. It would not be feasible for a political party to hold its primary outside of the mechanism established by the State for financial reasons, because of the fact that there is a time when everybody goes to the polls and you have to get the ballot printed up. The State election mechanism does that. So the parties do comply very much with the election system of the State because of that.

Now, in South Carolina, remember in one Presidential election year the South Carolina Republicans held their own Presidential primary, and I think they used the State mechanism by which to do that. But it was totally a party primary. But, generally speaking, if parties do not wish to go with the Presidential-preference primary, that Congress would set, they would then not do it by the primary process but would do it by a caucus convention process.

Mr. SWIFT. Certainly. And so what I was suggesting is we can supersede the State. The party, if it chooses, can find a mechanism—and it probably wouldn't be a primary, it would be as caucus or some other system—but they could go outside the parameters that we set——

Mr. DURBIN. Yes.

Mr. SWIFT [continuing]. To a totally party rule process to do it in their State any way they wished?

Mr. DURBIN. Yes; either a national party rule and State party rule process, because they usually mesh together.

Now, keep in mind, one of the last statements I made in my statement is that if Congress wishes to attract the parties into this process, then provide some sort of public funding for them, some sort of public grants, and condition that money on the fact that they comply with the scope of the regulations you wish to impose.

Mr. SWIFT. I thank you both. You have been extremely helpful in laying out the parameters of the area in which we can function to deal with the problem. I appreciate your support and help on this a great deal.

Mr. DURBIN. Thank you, Mr. Chairman.

Professor GRESSMAN. Mr. Chairman, may I just add one last sentence?

Mr. SWIFT. Certainly.

Professor GRESSMAN. Perhaps one way to distinguish some of these early preelection operations is to remember that basically what we're concerned with here is the right of the voters, of the people, to have a free system of elections that preserves the integrity of the process. As long as the States somehow involve the public in these preelection processes—be they by way of caucuses or conventions, let alone primaries—but to the extent that the people and voters get involved in those processes, I think Congress' power to preserve the integrity of their ultimate voting power at the general election prevails.

But when you get into other areas of trying to control what vote the delegate shall have, or how they shall be selected, then you're

BEST COPY AVAILABLE

getting into the gray area of the first amendment rights that Mr. Durbin has pointed out.

Mr. SWIFT. Thank you very much. I appreciate that.

Our last witness this afternoon is Richard Winger, ballot access consultant for the Libertarian Party. Mr. Winger, welcome to the committee. We very much appreciate your being here. You may proceed in any way you choose.

TESTIMONY OF RICHARD WINGER, BALLOT ACCESS CONSULTANT, LIBERTARIAN PARTY

Mr. WINGER. Thank you very much. I appreciate having a chance to express some of the concerns of parties other than the Democratic and Republican Parties.

One of the concerns that just occurred to me a few hours ago is with the June ending of the window. The people who drafted these bills—and they all end in June—seem to have forgotten that there have been parties formed as late as June. For instance, in 1912, Teddy Roosevelt got mad at the Republican Convention in June and proceeded to go out and set up a new party, and it qualified in 46 of the 48 States. Then he had his own national convention in August. If that were to happen now, and these bills were in effect, it would be illegal for that new party to go about the business of selecting delegates to its national convention.

A more recent example is in 1948, when Strom Thurmond was upset with the Democratic National Convention in June, in Philadelphia, so he did the same thing. He went out and organized his party in every State in the South, which was the only part of the country he cared about, and had his own convention in Birmingham in July. So they were in the process of selecting delegates and that was after this June cutoff. So I don't see any reason why anyone would be opposed to changing the June to a later date.

I would also just mention that the Republican Party wasn't even founded until July 6, 1854, and it went on in the fall of 1854 elections to elect a plurality of the U.S. House of Representatives. So we know that back then there was no telephone, television, and radio, and yet that fast change managed to occur in those few months. So we should not shut off unexpected developments in the last months of summer.

I would also ask you to exempt minor parties from the starting date, the March date, especially if they are regulating caucuses, because as my written testimony makes clear, I think, there are so many States where a party cannot begin to qualify until after it knows who its Presidential candidate is going to be. Third parties today are just forced to have their national conventions before the window even opens.

This leads to absurd results. The Libertarian Party in 1984 was entitled in four States to have a Presidential primary—North Carolina, Wisconsin, Idaho, and California. But because of the laws of certain other States, we had had our Presidential convention in September 1983. So our Presidential primaries were meaningless. The voters who were registered Libertarian, they got a Presidential primary ballot, but it only had one name on it. It was absurd.

BEST COPY AVAILABLE

It would be very simple for you to restrict these bills to parties which polled 20 percent of the vote in the previous Presidential election. Or, alternatively, if you incorporated parts of Congressman Conyers' H.R. 2320 into this bill, that would solve the problem in another way.

Thank you very much.

STATEMENT OF RICHARD WINGER, BALLOT ACCESS CONSULTANT, LIBERTARIAN PARTY—COALITION FOR FREE AND OPEN ELECTIONS

Mr. Chairman, thank you for the opportunity to appear before your Subcommittee. I am here to describe the impact of H.R. 1380 and H.R. 3542 on political parties other than the Democratic and Republican Parties. I'll begin by using the Libertarian Party as an example.

The Libertarian Party held its 1984 presidential nominating convention on Labor Day weekend, *1983*, in New York City. At the time of the convention, the party was a fully qualified party, under state electing law, in these 18 states: Alaska, Arizona, California, Delaware, Hawaii, Idaho, Indiana, Kansas, Maryland, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, South Carolina, Utah and Wisconsin. Delegates to the Libertarian national convention from those states, and all other states as well, had been chosen under party rules during the summer of 1983.

If H.R. 1390 and H.R. 3542 had been in effect during 1983, it would have been illegal for the state Libertarian Parties in those 18 states listed above, to have chosen delegates during 1983. Both bills regulate the dates of caucuses as well as primaries, and both bills apply to all political parties recognized under state law. If Congress should enact a bill such as H.R. 1380 or H.R. 3542, the Libertarian Party and other third parties would be required to substantially change their presidential convention schedules.

Why did the Libertarian Party hold its presidential convention so early? First, a successful national convention can only be held in the summer, when delegates are free to take vacation time from their jobs and children are out of school. Second, the option of holding the presidential convention in the summer of the presidential election year itself is closed, because there are 19 states in which it is legally impossible to begin to qualify the party for the ballot until after the party knows who its nominees are. In 1968 these 19 states, which are at the root of the problem, will require over 250,000 valid signatures, and none of these signatures can be collected until after the party knows who its nominees for president and vice-president will be. Since this terrific petitioning job, from these 19 states, cannot begin until after the party knows who its nominees will be, the Libertarian Party and other third parties must hold their national conventions very, very early.

A list of the 19 states which require third parties to know who their candidates are, before they can begin to petition, is attached.

I hope the dilemma is clear . . . bad state election laws in 19 states force third parties to choose their presidential candidate very early; yet H.R. 1380 and H.R. 3542 would require third parties to choose their presidential candidates rather late.

As most of you know, there is a bill by Congressman Conyers, H.R. 2320, which would set a ceiling on the number of signatures that a third party presidential candidate may be required to submit for ballot access. H.R. 2320 would also permit such petitions to be submitted as late as September. If this Subcommittee were to incorporate portions of H.R. 2320 into any bill you write which controls the timing of the presidential nominating process, the problem would be solved. Another solution to the problem would simply be to restrict bills such as H.R. 1380 and H.R. 3542 to political parties which polled, for example, 20% of the vote in the last presidential election.

I thank you for the opportunity to appear before you today.

BEST COPY AVAILABLE

PRESIDENTIAL ELECTIONS.—STATES WITH NO PROCEDURE FOR A NEW PARTY TO GET ON THE BALLOT UNTIL AFTER IT HAS CHOSEN ITS CANDIDATES

State	1988 deadline to submit petition	No. of signatures needed
Colorado	August 2	5,000
Connecticut	August 30	14,910
District of Columbia	August 16	[1] 2,700
Illinois	August 8	25,000
Indiana	July 1	[1] 38,000
Iowa	September 2	1,000
Kentucky	August 30	5,000
Massachusetts	August 2	[1] 43,000
Minnesota	September 13	2,000
Missouri	August 1	21,083
New Hampshire	August 10	3,000
New Jersey	see note below	800
New York	September 20	20,000
Pennsylvania	August 1	[1] 52,000
Rhode Island	September 3	1,000
Vermont	September 22	1,000
Virginia	August 26	[1] 12,500
Washington	July 23	188
West Virginia	August 1	7,358
Total		255,539

[1] Estimate

Note on the New Jersey deadline: the 1984 deadline of April 26 was held to be unconstitutionally early in LaRouche v. Burgio, 594 F. Supp 614. The New Jersey legislature's only response to this decision has been to make the deadline even earlier: in 1988 it is April 10. As of May 1, 1986 there is no bill pending in the New Jersey Legislature to make the deadline any later. Also see attached letters from the New Jersey Department of State.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE ELECTION DIVISION,
Trenton, NJ, February 20, 1985.

Mr. RICHARD WINGER,
San Francisco, CA.

DEAR MR. WINGER: Thank you for your recent inquiry concerning the deadline for submission of petitions by independent candidates for President.

As you may know, the Department of State is an executive agency of the State of New Jersey and as such can only implement laws passed by the legislature of this State. The legislature is aware of the outcome of *LaRouche* vs. *Burgio* and only the legislature may enact a change to the affected statutes.

Your interest in this matter is appreciated. If there is anything else we can be of help with, feel free to call on us.

Very truly yours,

JOHN M. SMITH,
Election Division.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE ELECTION DIVISION,
Trenton, NJ, February 10, 1986.

Mr. RICHARD WINGER,
San Francisco, CA.

DEAR MR. WINGER: Your recent letter to the Attorney General, has been forwarded to this Division for reply.

I have been advised it is anticipated that legislation will be introduced to delay the filing deadline for Independent Presidential candidates.

In New Jersey, the County Clerks draw for ballot position 85 days prior to the general election. It would seem logical that this time period could serve as a guide as to the filing deadline. At this point in time, I can only suggest that we will all have to wait until the legislation is introduced.

BEST COPY AVAILABLE

I would like to advise that W. Cary Edwards was appointed by Governor Kean to the post of Attorney General on January 21, 1986.

I trust this will answer your inquiry.

Sincerely,

George H. Bloon, Jr.,

Supervisor, Election Administration.

Mr. SWIFT. Thank you very much. The point you make about going more precisely after what the target is, which is the two major parties, I think is well taken. As we pursue the legislation, we will keep that suggestion in mind.

Thank you very much.

I ask unanimous consent that the record be left open for prepared remarks of any of the witnesses we have had today, and that they be contained in full in the record.

With that, the subcommittee stands adjourned.

[Whereupon, at 2 p.m., the subcommittee was adjourned.]

○

BEST COPY AVAILABLE